

CHAPTER NO. 406

HOUSE BILL NO. 1676

By Representative Kisber

Substituted for: Senate Bill No. 1806

By Senator McNally

AN ACT to amend Tennessee Code Annotated, Title 67.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. The title of this act is, and may cited as, "The Tax Revision and Reform Act of 1999".

SECTION 2. Tennessee Code Annotated, Title 67, Chapter 4, is amended by deleting Parts 8 and 9 in their entirety for tax years beginning on or after July 1, 1999. The provisions of Sections 3 and 4 of this act shall be deemed to be the substitute and successor provisions to the former provisions of Title 67, Chapter 4, Parts 8 and 9. The Tennessee Code Commission is authorized and requested to revise any references to the former Title 67, Chapter 4, Parts 8 and 9 to reflect the provisions of this act as supplements or replacement volumes of the Tennessee Code Annotated are issued.

SECTION 3. Tennessee Code Annotated, Title 67, Chapter 4, is amended by adding the following new part:

PART 20 - EXCISE TAX LAW OF 1999

67-4-2001. This part may be cited and referred to as the "Excise Tax Law of 1999".

67-4-2002. The tax herein imposed is a state tax for state purposes only and no county or municipality or taxing district shall have power to levy any like tax.

67-4-2003. (a) The supervision and collection of the tax imposed by this part is under the direction of the Department of Revenue, and such department has the authority and power to prescribe forms upon which entities liable for the tax imposed shall make reports of such facts and information as will enable the commissioner to ascertain the correctness of the amount reported and paid by such entities.

(b) The commissioner may, within the commissioner's discretion, require any taxpayer to file with its Tennessee excise tax return, a copy of the federal tax forms filed with the Internal Revenue Service for the same tax year.

(c) All persons subject to the tax imposed by this part shall register with the Department of Revenue by completing and filing a registration information form prescribed by the department. Such form shall be filed with the department within sixty (60) days after July 1, 1999 or within fifteen (15) days after the date the person becomes subject to the tax, whichever date occurs last, provided, however, that persons registered under prior law, or who have filed a return under prior law, are not required to register for the tax imposed by this part.

67-4-2004. As used in Parts 20 and 21 of this chapter:

(1) "Business earnings" means earnings arising from transactions and activity in the regular course of the taxpayer's trade or business or earnings from tangible and intangible property if the acquisition, use, management or disposition of the property constitutes an integral part of the taxpayer's regular trade or business operations. In essence, earnings which arise from the conduct of the trade or trades or business operations of a taxpayer are "business earnings," and the taxpayer must show by clear and cogent evidence that particular earnings are classifiable as nonbusiness earnings. A taxpayer may have more than one (1) regular trade or business in determining whether income is "business earnings". This subsection expresses the legislative intent to implement and clarify the distinctions between business and nonbusiness earnings, as found in the Uniform Division of Income for Tax Purposes Act, as generally interpreted by states adopting the act;

(2) (A) "Business of a financial institution" means:

(i) The business that a regulated financial corporation may be authorized to do under state or federal law or the business that its subsidiary is authorized to do by the proper regulatory authorities;

(ii) The business that any person organized under the authority of the United States or organized under the laws of any other taxing jurisdiction or country does or has authority to do that is substantially similar to the business that a corporation may be created to do under title 45, or any business that a corporation or its subsidiary is authorized to do by Title 45;

(iii) Otherwise making, acquiring, selling or servicing loans or extensions of credit including, but not limited to, the following:

(a) Secured or unsecured consumer loans;

(b) Installment loans;

(c) Mortgages or deeds of trust or other secured loans on real or tangible personal property;

(d) Credit card loans;

(e) Secured or unsecured commercial loans of any type;

(f) Letters of credit and acceptance of drafts;

(g) Loans arising in factoring; and

(h) Any other transactions of a comparable economic effect;

(iv) Leasing or acting as an agent, broker or adviser in connection with leasing real and personal property that is the economic equivalent of an extension of credit; or

(v) Operating a credit card business.

(B) Notwithstanding the provisions of this subdivision (2), if the business of a financial institution generates less than fifty percent (50%) of a corporation's gross income, the corporation shall not be considered to be a financial institution under subdivision (8). For purposes of this subdivision (2)(B), the computation of gross income of a corporation does not include income from nonrecurring, extraordinary transactions;

(3) "Commercial domicile" means the principal place from which the trade or business of a business entity is directed or managed;

(4) "Commissioner" means the Commissioner of Revenue;

(5) "Compensation" means wages, salaries, commissions and any other form of remuneration paid to employees for personal services, whether paid directly or paid indirectly by invoice pursuant to a staff leasing arrangement with a staff leasing company or staff leasing group, but excluding contributions made by the employer to qualified pension plans and other employee benefits not includible in the employee's gross income;

(6) "Department" means the Department of Revenue;

(7) (A) "Doing business in Tennessee" or "doing business within this State" means any activity purposefully engaged in, within Tennessee, by a person with the object of gain, benefit, or advantage, consistent with the intent of the General Assembly to subject such persons to the Tennessee franchise, excise tax to the extent permitted by the United States Constitution and the Constitution of the State of Tennessee.

(B) A financial institution shall be presumed, subject to rebuttal, to be doing business in this State if the sum of its assets and the absolute value of its deposits attributable to sources within this State is five million dollars (\$5,000,000) or more. For purposes of this part, tangible assets shall be attributable to this State if they are located in this State. Intangible assets shall be attributable to this State if the income earned on those assets is attributable to this State pursuant to this part. Deposits shall be attributed to this State if they are deposits made by this State or any of its agencies, instrumentalities or subdivisions or by any resident of this State, regardless of whether the deposits are accepted or maintained at locations in this State. Additionally, a financial institution shall be deemed to be doing business in this State if the institution:

(i) Maintains an office in this State;

(ii) Has an employee, representative or independent contractor conducting business in this State;

(iii) Regularly sells products or services of any kind or nature to customers in this State that receive the product or service in this State;

(iv) Regularly solicits business from potential customers in this State;

(v) Regularly performs services outside this State which are consumed in this State;

(vi) Regularly engages in transactions with customers in this State that involve intangible property, including loans, and result in receipts flowing to the taxpayer from within this State;

(vii) Owns or leases property located in this State; or

(viii) Regularly solicits and receives deposits from customers in this State.

(C) Notwithstanding any other provision of law to the contrary, a financial institution is not considered to be conducting the business of a financial institution in this State if the only activity of the financial institution in this State is the ownership of an interest in one (1) or more of the following types of property, including those activities within this State that are reasonably required to evaluate and complete the acquisition or disposition of the property, the servicing of the property or the income from it, the collection of income from the property, or the acquisition or liquidation of collateral relating to the property:

(i) An interest in a real estate mortgage investment conduit, a real estate investment trust, or a regulated investment company as those terms are defined by the Internal Revenue Code of 1986, as amended;

(ii) An interest in a loan-backed security representing ownership or participation in a pool of promissory notes or certificates of interest that provide for payments in relation to payments or reasonable projections of payments on the notes or certificates;

(iii) An interest in a loan, lease, note or other assets attributed to this State and in which the payment obligations were solicited and entered into by a person that is independent and not acting on behalf of the owner;

(iv) An interest in the right to service or collect income from a loan or other asset from which interest on the loan or other asset is attributed to this State and in which the payment obligations were solicited and entered into by a person that is independent and not acting on behalf of the owner;

(v) An interest in demand deposit clearing accounts, federal funds, certificates of deposit and other similar wholesale banking instruments issued by other financial institutions;

(vi) An interest in a security; or

(vii) An interest of a financial institution in any intangible, tangible, real or personal property acquired in satisfaction, whether in whole or in part, of any asset embodying a payment obligation which is in default, whether secured or unsecured, if the ownership of the interest would be exempt otherwise as provided in subitems (C)(i)-(v).

(D) For the purposes of subitem (C)(iii) and (iv), an "independent person who is not acting on behalf of the owner" is defined as follows:

(i) At the time of the acquisition of the assets, the owner of the asset does not directly or indirectly own fifteen percent (15%) or more of the outstanding stock or, in the case of a partnership or limited liability company, fifteen percent (15%) or more of the capital or profits interest, of the entity from which the owner originally acquired the asset. In determining indirect ownership, an owner is deemed to own all of the stock, capital interest or profits interest owned by another person if the owner directly owns fifteen percent (15%) or more of the stock, capital interest or profits interest in that other person. Also, the owner is deemed to own all stock, capital interest and profits interest directly owned by any intermediary parties in the transaction, to the extent a fifteen percent (15%) or more chain of ownership of stock, capital interest or profits interest exists between the owner and any intermediary party;

(ii) The entity from which the owner acquired the asset regularly sells, assigns or transfers interest in such assets to three (3) or more persons during the full twelve-month period immediately preceding the month of acquisition; and

(iii) The entity from which the owner acquired the asset does not sell, assign or transfer ninety percent (90%) or more of its exempt assets to the owner during the full twelve-month period immediately preceding the month of acquisition.

(E) A person shall not be considered to be "doing business in Tennessee" or "doing business within this State" for purposes of this Part 20 or Part 21 of this chapter solely because of any one (1) of the following activities:

(i) The presence of employees and/or product samples and/or other promotional materials at one (1) or more trade shows, exhibits, conventions, or similar events in this State for a total of not more than twenty (20) days per calendar year; provided, that the activities of the entity's employees while in Tennessee are limited to maintaining or facilitating the trade show or convention; the purchasing of goods on behalf of their employer; the solicitation of sales; and the gathering of samples, promotional material or other information offered at the event.

(ii) Activities by publishers of magazines and books, who contract with Tennessee printers for the printing of their magazines or books, when such activities in Tennessee are

limited solely to activities having to do with the printing, storage, labeling and/or delivery to the United States mail or common carrier of such magazines or books; or the maintenance of raw materials with respect to such activities; or the maintenance of employees solely in connection with the production and quality control of such printing, storage, labeling and/or delivery; provided, that the publisher and printer are not affiliated with one another. Persons are affiliated with one another if either directly or indirectly controls the other, or if the persons are directly or indirectly controlled by a common parent.

(iii) Physical presence in this State of an out-of-state person's equipment, tooling, inventory, and employees on a temporary basis, when:

(a) The activity in which such items and employees are engaged is not the pursuit, creation or maintenance, by the out-of-state person or any person that is affiliated with it, of a market in this State;

(b) The equipment and tooling are not used, worked on or held in this State by a person that is affiliated with the out-of-state person;

(c) The out-of-state person's employees have no control over the use or work done in this State by the in-state person; and

(d) The extent and value of such items, the number of such employees, and the number of days the employees work in this State, in light of all the facts and circumstances, are qualitatively and quantitatively de minimis. Persons are affiliated with one another if either directly or indirectly controls the other, or if the persons are directly or indirectly controlled by a common parent; or

(iv) The temporary presence in this State of employees solely for the purpose of purchasing goods from vendors in this State for use in the employer's business out-of-state; provided, that the total number of days the employer has one (1) or more employees present in this State does not exceed thirty (30) per calendar year; and further provided that the employer does not furnish, directly or indirectly, any office in this State for their use;

(8) "Financial institution" means a holding company, any regulated financial corporation, a subsidiary of a holding company or regulated financial corporation, or any other person that is carrying on the business of a financial institution. However, "financial institution" does not include insurance companies subject to tax under §§ 56-4-201 through 56-4-214;

(9) "Gross receipts" means total receipts from whatever sources derived before any deductions, but not including actual sales returns and allowances;

(10) "Holding Company" means any corporation defined as a "bank holding company" under 12 U.S.C. Section 1841(a) of the Bank Holding Company Act of 1956, as it may be amended from time to time; or any corporation defined as a "savings and loan holding company", "multiple savings and loan holding company", or "diversified savings and loan holding company", under 12 U.S.C. Section 1467 (a)(1), as it may be amended from time to time;

(11) "Hospital" has the definition provided at § 68-11-201; provided, that as used in this part a "hospital" must be licensed as a hospital by the board of licensing health care facilities pursuant to the provisions of § 68-11-202, et seq.; and provided further, that a "hospital" does not include nursing homes, ambulatory surgical treatment centers or other health care facilities enumerated and defined in Title 68, Chapter 11, unless operated as a part of and in connection with a "hospital";

(12) "Hospital company" means a corporation or other entity subject to the taxes imposed under Parts 20 and 21 of this chapter and which qualified before January 1, 1999, with the department as a hospital company as defined under prior law;

(13) "Internal Revenue Code" means Title 26 of the United States Code as effective during the year in which net earnings are determined under this part ;

(14) "Nonbusiness earnings" means all earnings other than business earnings;

(15) "Not-for-profit" means any person included under Sections 401(a), 501(c), and 501(d) of the Internal Revenue Code;

(16) "Person" or "taxpayer" means every corporation, subchapter S corporation, limited liability company, professional limited liability company, registered limited liability partnership, professional registered limited liability partnership, limited partnership, cooperative, joint-stock association, business trust, regulated investment company, real estate investment trust, state-chartered or national bank, state- or federally-chartered savings and loan association and any other organization or entity engaged in business; but does not include sole proprietorships or general partnerships; and provided that all such entities set forth herein shall be classified as such in accordance with the provisions of 26 U.S.C. Section 7701 and the federal regulations and rulings promulgated thereunder;

(17) "Regulated financial corporation" means an institution, the deposits, shares, or accounts of which are insured under the Federal Deposit Insurance Act, by the federal savings and loan insurance corporation, or any institution which is a member of a federal home loan bank, any other bank or thrift institution incorporated or organized under the laws of any taxing jurisdiction, or any foreign country which is engaged in the business of receiving deposits, any corporation organized under the provisions of 12 U.S.C. §§ 611-631 (Edge Act corporations), and any agency of a foreign depository as defined in 12 U.S.C. § 3101;

(18) "Sales" means all gross receipts of the taxpayer not allocated under this part;

(19) "Securities" means United States treasury securities, obligations of United States government agencies and corporations, obligations of state and political subdivisions, corporate stock and other securities, participations in securities backed by mortgages held by the United States or state government agencies, loan-backed securities and similar investments;

(20) "Staff leasing arrangement" shall have the same definition as is set forth in § 62-43-103(a)(9);

(21) "Staff leasing company" shall have the same definition as is set forth in § 62-43-103(a)(10); provided that, as used in this part, a staff leasing company must be licensed as a staff leasing company by the Commissioner of the Department of Commerce and Insurance pursuant to the provisions of § 62-43-108; and provided further, that a staff leasing company does not include "captive leasing companies" as defined in § 62-43-120;

(22) "Staff leasing group" shall have the same definition as is set forth in § 62-43-103(a)(11); provided that, as used in this part, a staff leasing group must be licensed as a staff leasing group by the Commissioner of Commerce and Insurance pursuant to the provisions of § 62-43-108; and provided further that, a staff leasing group does not include "captive leasing companies" as defined in § 62-43-120;

(23) "State" means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States and any foreign country or political subdivision thereof;

(24) "Taxing jurisdiction" means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico or a territory or possession of the United States; and

(25) "Unitary business" means business activities or operations of financial institutions that are of mutual benefit, dependent upon, or contributory to one another, individually or as a group, in transacting the business of a financial institution. "Unitary business" may be applied within a single legal entity or between multiple entities. "Unitary group" includes those entities that are engaged in a unitary business wholly within or within and without this State;

(A) Unity is presumed whenever there is unity of ownership, operation and use evidenced by centralized management or executive force, centralized purchasing, advertising, accounting or other controlled interaction among entities that are engaged in the business of a financial institution. The absence of these centralized activities does not, however, necessarily evidence a nonunitary business;

(B) Unity of ownership does not exist unless the corporation is a member of two (2) or more business entities and more than fifty percent (50%) of the voting stock of each member is directly or indirectly owned by:

(i) A common owner or common owners, either corporate or noncorporate; or

(ii) One (1) or more of the members of the group.

67-4-2005. Doing business in Tennessee by any person or taxpayer, and/or exercising the corporate franchise, are hereby declared to be taxable privileges. The tax is an accrued tax and is imposed for the exercise of the specified privilege during the period that coincides with the tax year covered by the return required.

67-4-2006. (a)(1) For a corporation or any other taxpayer treated as a corporation for federal tax purposes, or any other taxpayer required to file a federal income tax return on a federal form 1120 or any variation thereof, except for a corporation electing S corporation status under Sections 1361-1363 of the Internal Revenue Code, and except for a unitary business as is defined in § 67-4-2004(25), "net earnings" or "net loss" is defined as federal taxable income or loss before the operating loss deduction and special deductions provided for in Sections 241-247 and 249 of the Internal Revenue Code, and as adjusted by subsections (b) and (c) of this section.

(2) For a corporation electing S corporation status under 26 U.S.C. Sections 1361-1363, "net earnings" is defined as federal taxable income calculated as if the corporation had not elected S status, taken before the operating loss deduction and special deductions provided for in 26 U.S.C. Sections 241-247 and 249-250, and subject to the adjustments in subsections (b) and (c) of this section.

(3) For a unitary business, as is defined in § 67-4-2004(25), "net earnings" or "net loss" is defined as the combined net earnings or net loss as defined in subsection (a)(1) of this section for all members of the unitary group with all dividends, receipts and expenses resulting from transactions between members of the unitary group excluded when computing combined net earnings, and subject to the adjustments in subsections (b), (c) and (d) on a combined basis. Financial institutions that form a unitary business shall file a combined return and pay tax on all operations of the unitary business. This return shall include the net earnings or net losses of all members of the unitary group even if some of the members would not otherwise be subject to taxation under this part.

(4) In the case of a person or taxpayer treated as a partnership for federal tax purposes, or any other person required to file a federal partnership return (form 1065 or any variation thereof), including but not limited to limited liability companies, "net earnings" or "net loss" is defined as an amount equal to: (1) the amount of ordinary income or loss determined under the applicable provisions of the Internal Revenue Code, increased or decreased by additional items of income or expense specifically allocated to partners or members under the provisions of Sections 701-761 of the Internal Revenue Code, including but not limited to guaranteed payments to partners, which additional items are not already included in ordinary income or loss; less (2) the amount subject to self-employment taxes distributable or paid to each partner or member, provided, however, this amount shall not create or increase any net loss; less (3) the amount contributed to qualified pension or benefit plans, including all plans described in Section 401 of the Internal Revenue Code, of any partner or member, provided, however, this amount shall not create or increase any net loss; as adjusted by subsections (b) and (c) of this section.

(5) In the case of a single member limited liability company which is treated as an individual taxpayer for federal income tax purposes, "net earnings" or "net loss" is defined as an amount equal to: (a) the amount of net profit or loss from all businesses engaged in by the taxpayer, determined by applicable provisions of the internal revenue code as is reported on federal form 1040 or any variation thereof, and appropriate schedules, including any amount subject to self employment tax, without regard to any cap, and including the amount of any gains or losses from the sale of assets held or used in the business; less: (b) the amount subject to self-employment taxes, provided, however, this amount shall not create or increase any net loss; (c) as adjusted by subsections (b) and (c) of this section.

(6) In the case of a business trust, estate, other than a decedent's estate, or any other person doing business in Tennessee and not covered in subdivisions 1 through 4 above, "net earnings" or "net loss" is defined as taxable income or loss determined under applicable provisions of the Internal Revenue Code, excluding any net operating loss deduction or special deductions similar to those provided for in Sections 241-247 and 249 of the Internal Revenue Code, as adjusted by subsections (b) and (c) of this section.

(b) (1) There shall be added to a taxpayer's net earnings or net losses:

(A) Excise tax imposed by this State to the extent deducted in determining net earnings;

(B) Interest income from obligations defined in 26 U.S.C. § 103(a), reduced by allowable amortization including any interest expense disallowed for federal purposes pursuant to 26 U.S.C. §§ 265 and 291;

(C) Any deduction made pursuant to 26 U.S.C. §§ 611-617 to the extent the deduction when added with similar deductions in prior years exceeds the cost of the property;

(D) The charitable contributions deduction claimed under 26 U.S.C. § 170;

(E) Any capital loss carrybacks or carryovers, arising in the course of a trade of business and deducted pursuant to 26 U.S.C. § 1212(a);

(F) Any gross premiums tax deducted in determining net earnings;

(G) Any expense or depreciation, permitted as a deduction in computing federal taxable income solely as a result of lease characterizations permitted under § 168 of the Economic Recovery Tax Act of 1981, which would not have been permitted in the absence of such act; it being the legislative intent that excise tax revenue not be reduced due to lease characterizations made for the purpose of transferring investment tax credits and depreciation allowances from one business entity to another; and

(H) Any gain on the sale of an asset not already included in the taxpayer's net earnings or loss distributed by a taxpayer treated as a partnership for federal tax purposes, by an S corporation or by a business trust, to a member, partner, shareholder or certificate holder,

when such asset is sold within twelve (12) months of the date of distribution. Thus, in such a case, the gain for excise tax purposes is recognized by the entity making the asset distribution rather than by the seller.

(l) Any net loss and any item of expense or loss which meets all of the following criteria:

(i) is included in the determination of the taxpayer's net earnings or loss;

(ii) is from an S-corporation, an entity treated as a partnership for federal tax purposes, or a single member limited liability company, which is subject to and files a return for the tax imposed by this part; and

(iii) is allocated to a partner or shareholder of such entity referred to in subitem (ii).

(2) There shall be subtracted from the net earnings and losses:

(A) Dividends earned by a taxpayer who owns eighty percent (80%) or more of the outstanding capital stock of a corporation.

(B) Any amount included in federal taxable income but not taxable under the laws of this State;

(C) A portion of the gain or loss of the sale or other disposition of property having a higher basis for Tennessee excise tax purposes than federal income tax purposes measured by the difference in the Tennessee basis and the federal basis;

(D) The actual charitable contributions made during the tax year by a taxpayer;

(E) Any capital losses incurred during the fiscal year, arising in the course of a trade or business, and not deductible under 26 U.S.C. § 1211(a);

(F) Any expense, other than income taxes, not deducted in determining federal taxable income for which a credit against the federal income tax is allowable;

(G) Any amount included in federal taxable income solely as a result of lease characterizations permitted under the Economic Recovery Tax Act of 1981, § 168, which would not have been permitted in the absence of such act;

(H) Any amount of depreciation or other expense which the taxpayer could have deducted in computing federal taxable income had it not made the election to enter into a lease transaction permitted under the Economic Recovery Tax Act of 1981, § 168, which would not have been permitted in the absence of such act;

(I) An amount equal to the difference, if any, between the reserve for bad debts allowed under 26 U.S.C. §§ 585 and 593, as such

section existed on December 31, 1986, and such reserve as it may have been modified subsequently; and

(J) Any loss on the sale of an asset not already included in the taxpayer's net earnings or loss distributed by a taxpayer treated as a partnership for federal tax purposes, by an S corporation or by a business trust, to a member, partner, shareholder or certificate holder, when such asset is sold within twelve (12) months of the date of distribution. Thus, in such a case, the loss for excise tax purposes is recognized by the entity making the asset distribution rather than by the seller.

(K) Any net gain and item of income which meets all of the following criteria:

(i) is included in the determination of the taxpayer's net earnings or loss;

(ii) is from an S-corporation, an entity treated as a partnership for federal tax purposes or a single member limited liability company, which is subject to and files a return for the tax imposed by this part; and

(iii) is allocated to a partner, shareholder or member of such entity referred to in subitem (ii).

(c) A taxpayer's net earnings, or net loss, shall be determined under subsections (a) and (b) of this section and shall be subject to further adjustments provided by this section. Taxpayers doing business both within and without Tennessee so as to be entitled to apportionment shall apportion such net earnings or net loss using the appropriate apportionment formula provided in this part. The taxpayer shall then deduct any loss carryovers, computed in accordance with subdivisions (1) through (5) below, from its net earnings so determined:

(1) In the case of taxpayers that were subject to the excise tax under prior law, any net qualified operating loss incurred for fiscal years ending on or after January 15, 1984 may be deducted. In the case of all other taxpayers, any net operating loss incurred for fiscal years ending on or after July 1, 1999 may be deducted. For this purpose, "net operating loss" is defined as the excess of allowable deductions over total income allocable to this State for the year of the loss. Qualified net operating losses may be carried forward and deducted in the next succeeding tax year or years in which the taxpayer has net income until fully utilized, but in no case for more than fifteen (15) years after the taxable year in which the net operating loss occurs. For fiscal years ending on or after July 15, 1990, in the case of a unitary business, as defined in § 67-4-2004(25), the net operating loss incurred in the current year shall be determined on a combined basis as specified in subdivision (a)(3). For tax years ending prior to July 15, 1990, any net operating loss incurred by a member of the unitary group that has been apportioned to Tennessee in a year prior to filing a combined return shall be allowed to the unitary group in succeeding tax years until fully utilized, but in no case more than seven (7) years after the taxable year in which the net operating loss occurs.

(2) Except for unitary groups of financial institutions, each taxpayer is considered a separate entity; therefore, in the case of mergers, consolidations, and like transactions, no loss carryovers incurred by the predecessor taxpayer shall be allowed as a deduction from net earnings on the excise tax return filed by the successor taxpayer. With the exception set forth in subdivision (3), a loss carryforward may be taken only by the taxpayer that generated it.

(3) Notwithstanding the provisions contained in subdivision (2), when a taxpayer merges out of existence and into a successor taxpayer that has no income, expenses, assets, liabilities, equity or net worth, any qualified Tennessee loss carryover of the predecessor that merged out of existence shall be available for carryover and deduction from the net earnings of the surviving successor in accordance with the provisions of this subsection.

(4) A unitary group of financial institutions may take any qualified Tennessee loss carryforward that was generated by any group member that is in existence as a member of the group at the end of the group's tax year; provided that such loss carryover has not previously been taken by the member itself before it joined the group or by another unitary group of financial institutions at the time the financial institution generating the loss was a member of that group; and provided that the loss carryover shall be subject to the limitations set forth in this subsection.

(5) There shall be added to the net loss as determined for excise tax purposes, all nonbusiness earnings, interest and dividends, excluded from net earnings pursuant to this section, and any other income excluded from net earnings pursuant to this section.

(d) The amount computed under subsections (a), (b) and (c) of this section shall be the taxpayer's net earnings for purposes of the Tennessee excise tax base to which the tax rate is applied as provided in Section 67-4-2007.

67-4-2007. (a) All persons, except those having not-for-profit status, doing business in Tennessee, shall, without exception other than as provided herein, pay to the Commissioner of Revenue, annually, an excise tax, in addition to all other taxes, equal to six percent (6%) of the net earnings for the next preceding fiscal year for business done in this State during that fiscal year. Notwithstanding the fact that a person is not-for-profit or otherwise exempted from the excise tax, such person shall be subject to the excise tax on all of its Tennessee net earnings that are attributable to any activities unrelated to and outside the scope of the activities that gave it an exemption status, including all unrelated business taxable income as defined in Section 512 of the Internal Revenue Code.

(b) Every such person, now or hereafter doing business within this State shall, as a recompense for the protection of its local activities and as compensation for the benefits it receives from doing business in Tennessee, pay the tax imposed by this part.

(c) The tax imposed by this part shall apply to taxpayers whose business is being conducted by a receivership or trusteeship appointed by any court of competent jurisdiction and shall continue to accrue until such time as the taxpayer has been actually and legally dissolved or withdrawn from this State.

67-4-2008. There shall be exempt from the payment of the tax levied under this part the following:

(1) Any corporation organized under the laws of the State of Tennessee whose sole expressed corporate purpose is for the furthering of industrial development in communities throughout the state, and doing related matters thereto, and whose stockholders receive no income other than interest or dividends on money invested in such corporation for constructing industrial buildings and whose officers receive no compensation;

(2) Corporations organized for the purpose of erecting, owning or operating a common meeting place for more than one (1) Masonic Lodge, more than one (1) Lodge of Odd Fellows, or similar lodges, and which corporations could obtain general welfare charters, and in which corporations all the stock is owned by lodges participating in the common temple or meeting place, regardless of the type of charter held by such operating corporations, except on income received by such corporations as rentals for use for commercial purposes;

(3) Any regulated investment company or investment fund organized as a unit investment trust taxable as a grantor trust under 26 U.S.C. §§ 671-677; provided, that not less than seventy-five percent (75%) of the value of the investments of such regulated investment company or unit investment trust shall be in any combination of bonds of the United States, State of Tennessee, or any county or any municipality or political subdivision of the State, including any agency, board, authority or commission of the state or its subdivisions;

(4) Federal credit unions, credit unions organized under the laws of other taxing jurisdictions, production credit associations organized under 12 U.S.C. § 2071 et seq., or merged associations under 12 U.S.C. § 2279c-1, production credit associations organized under Title 56, Chapter 4, Part 4, or investment companies organized under Title 56, Chapter 4, Part 3; and

(5) Venture capital funds; provided, that for purposes of this part and part 21 a venture capital fund is a limited liability company, limited liability partnership, or limited partnership, formed and operated for the exclusive purpose of buying, holding and/or selling securities, including debt securities, primarily in non-publicly traded companies on its own behalf and not as a broker, and the capital of which fund is primarily derived from investments by entities and/or individuals which are neither related to nor affiliated with the fund.

(6) Limited liability companies, limited partnerships and limited liability partnerships if both of the following criteria are met:

(A) Substantially all of the activity of the entity is either farming or the holding of one or more personal residences where one or more of the members or partners reside; and

(B) At least ninety-five percent (95%) of the voting rights, capital interest or profits of the entity are owned either by

natural persons who are relatives of one another or by trusts for their benefit.

(7) Limited liability companies, limited liability partnerships or limited partnerships existing on May 1, 1999, on which date and at all times thereafter met all of the following criteria: (i) were at least ninety-eight percent (98%) owned by corporate members of an affiliated group as defined in 26 U.S.C. Section 1504(a); (ii) were formed and operated for the exclusive purpose of acquiring notes from members of such affiliated group, accounts receivable, installment sale contracts, and similar evidence of indebtedness obtained in the ordinary course of business by one or more members of such affiliated group; (iii) the assets of which directly or indirectly serve as security for third party borrowings or securitized indebtedness acquired by third parties; (iv) at least eighty percent (80%) of the income therefrom is included in the income of a corporation doing business in Tennessee; and (v) such income is subject to the applicable allocation and apportionment rules as found in this part.

67-4-2009. The tax herein imposed shall be in addition to all other taxes and there shall be no credit allowed upon it except the following:

(1) On each annual excise tax return, insurance companies shall be allowed, as provided in § 56-4-217, a credit of the net amount of gross premiums tax paid which is measured by a period that corresponds to the excise tax period on which the return is based, plus any amount used to offset payment to the Tennessee guaranty association which has not otherwise been recovered, but not including the gross premiums receipts tax paid by fire insurance companies for the purpose of executing the fire marshal law;

(2) When an audit of an excise tax return for any year not barred by the statute of limitations discloses a change in the amount of tax due, there may be applied upon it as a credit any amount which the taxpayer is otherwise entitled to receive either as a credit under Part 4 or Part 5 of this chapter for excise taxes paid, or as a refund thereof under § 67-1-1802. This tax credit allowance may be applied notwithstanding the statute of limitations or the requirement for approval of certain refunds by the Commissioner of Revenue and the Attorney General and Reporter if such was made under § 67-1-1802, and also any statutory or regulatory requirement under various items of Part 4 or Part 5 of this chapter that the excise tax be paid prior to the allowance of any credit;

(3) (A) There shall be allowed a credit for any taxpayer against the tax imposed under this part for any income year, in an amount equal to twenty-five percent (25%) of total expenditures paid or incurred by such taxpayer in such income year for planning, site preparation, construction, renovation or acquisition of facilities for the purpose of establishing a child day care facility to be used primarily by the children of such taxpayer's employees and equipment installed for permanent use within or immediately adjacent to such facility, including kitchen appliances, to the extent that such equipment or appliances are necessary in the use of such facility for purposes of child day care; provided, that such facility is operated under the authority of a license issued by the Department of Human Services, and that the amount of tax credit allowed any taxpayer under the provisions of this section for any

income year may not exceed twenty-five thousand dollars (\$25,000). If two (2) or more taxpayers share in the cost of establishing such a facility for the children of their employees, each such taxpayer shall be allowed such credit in relation to the respective share paid or incurred by such taxpayer, of the total expenditures for the facility in such income year. If the amount of such tax credit allowed any taxpayer for any income year exceeds the amount of tax, without reduction for such tax credit, any balance of the credit remaining may be claimed against the tax imposed for any of the three (3) income years next succeeding; provided any such balance of credit may not be claimed for any such succeeding income year in which the child day care facility is operated for purposes of child day care for less than six (6) months;

(B) The credits permitted under subdivision (3)(A) shall be allowed only under the following conditions:

(i) The credits shall only apply to projects for which an application for a building permit for the project is made after May 2, 1994;

(ii) Applications as submitted to the Department of Revenue for the credit shall be approved in the order that applications for building permits are filed;

(iii) For each application approved for credit it shall be assumed that credit will be twenty-five thousand dollars (\$25,000) for the fiscal year in which the application is approved and the ensuing two (2) fiscal years for purposes of limiting credits as set forth in subdivision (3)(B)(iv); and

(iv) Applications shall be limited to those that would result in no greater credit in any fiscal year than one hundred thousand dollars (\$100,000) based upon the assumption set forth in subdivision (3)(B)(iii);

(4) (A) On each excise tax return, a credit shall be allowed for a percentage of the purchase price of industrial machinery purchased during the tax period covered by the return and located in Tennessee. For purposes of this section, "industrial machinery" means:

(i) "Industrial machinery" as defined by § 67-6-102; or

(ii) "Computer," "computer network," "computer software," or "computer system" as defined by § 39-14-601 and any peripheral devices, including, but not limited to, hardware such as printers, plotters, external disc drives, modems, and telephone units purchased in the process of making the "required capital investment" in Tennessee described in §67-4-2109(c)(1)(C) to qualify for the job tax credit.

(B) The credit taken on any return, however, shall not exceed fifty percent (50%) of the excise tax liability shown by any such return before the credit is taken;

(C) Any unused credit incurred for fiscal years ending on or after March 15, 1982, may be carried forward in any tax period until such

credit is taken, however, such credit may not be carried forward for more than fifteen (15) years;

(D) If any such industrial machinery, for the purchase of which a tax credit has been allowed, is sold or removed from this State during its useful life according to the depreciation guidelines in effect for excise tax purposes, the department shall be entitled to recapture a portion of the credit allowed by increasing the excise tax liability of any taxpayer, for the taxable period during which such machinery was sold or removed, in an amount equal to the percentage of useful life remaining on such industrial machinery at the time of sale or removal times the total credit taken on the purchase of such machinery;

(E) The credit provided in subdivision (4) shall be computed as follows:

(i) Machinery purchased from July 1, 1980, through June 30, 1981 - two-tenths of one percent (.2%) of the purchase price;

(ii) Machinery purchased from July 1, 1981, through June 30, 1982 - four-tenths of one percent (.4%) of the purchase price;

(iii) Machinery purchased from July 1, 1982, through June 30, 1983 - six-tenths of one percent (.6%) of the purchase price;

(iv) Machinery purchased from July 1, 1983, through June 30, 1984 - eight-tenths of one percent (.8%) of the purchase price; and

(v) Machinery purchased on or after July 1, 1984 - one percent (1%) of the purchase price;

(F) For purposes of the allowance of the credit against excise taxes under this section, any taxpayer who is a lessee of new industrial machinery and the original user thereof (including a lessee from an industrial development corporation as defined by Title 7, Chapter 53, or other tax exempt entity) shall be treated as having purchased such machinery during the tax period in which it is placed in service by the lessee, at an amount equal to its purchase price; and

(G) If industrial machinery is leased for a period which constitutes less than eighty percent (80%) of its useful life, then the lessee shall be deemed to have purchased only a portion of such machinery, at an amount determined by multiplying the actual purchase price of the machinery by a fraction, the numerator of which is the lease term, and the denominator of which is the useful life of the leased machinery;

(5) A hospital company filing a franchise/excise tax return on a combined basis as required in § 67-4-2014(e), together with all other members of its combined group filing with it, shall be allowed as a credit against the combined annual franchise/excise tax imposed an amount equal to the lesser of the franchise tax or excise tax so that the combined

annual franchise/excise tax of the combined group shall be limited to the greater of the two (2) of them; provided that this credit shall not apply to tax years beginning on or after January 1, 2007; and

(6) A hospital company filing a franchise/excise tax return on a combined basis as described in § 67-4-2014(e), together with all members of its combined group filing with it, shall be allowed as a further credit against the combined annual franchise/excise tax imposed on the group remaining after application of the credit allowed under subdivision (5) an amount equal to four percent (4%) of the cost of medical supplies and medical equipment used by or placed in service by the members of the controlled group in this State during the tax year; provided, that the aggregate amount of the credit allowed to a taxpayer under subdivision (5), together with the credit allowed to a taxpayer under this subsection, shall not exceed nine million dollars (\$9,000,000) in any one (1) tax year; and further provided that the credit allowed under this subdivision (6) shall not apply to tax years beginning on or after January 1, 2007. A corporation or other entity shall be deemed to have used or placed in service medical supplies and medical equipment used or placed in service by a partnership or limited liability company of which it is a partner or member which would be a hospital company, as defined in §67-4-2004(12), if it were a corporation or other entity upon which tax is imposed under Parts 20 and 21 of this chapter, and would be a member of its same controlled group, as defined in § 267(f)(1), Internal Revenue Code of 1986, as amended, if it were a corporation and its partners or members were shareholders. The amount of the cost of such medical supplies and medical equipment which is attributed to and deemed to have been used or placed in service by such corporation or other entity shall be equal to the pro rata portion of the cost of medical supplies and medical equipment used or placed in service by the partnership or limited liability company in the tax year. Such pro rata portion shall be determined based upon the corporation's or other entity's percentage of the profits and losses of such partnership or limited liability company during such tax year. As used in this subsection, "medical equipment" has the same meaning as "major medical equipment" as set forth in § 68-11-102(10), but without the limitation therein as to the cost thereof, and "medical supplies" means all apparatus, consumable products, appliances, and other tangible personal property, except drugs and medicines, used in provision of patient health care services, including all recordkeeping and documentation in connection with such services.

(7) (A) Except for unitary groups of financial institutions, each taxpayer is considered a separate entity; therefore, in the case of mergers, consolidations, and like transactions, no tax credit incurred by the predecessor taxpayer shall be allowed as a credit on the tax return filed by the successor taxpayer. With the exception set forth in subdivision (B), a credit carryforward may be taken only by the taxpayer that generated it.

(B) Notwithstanding the provisions contained in subdivision (A), when a taxpayer merges out of existence and into a successor taxpayer that has no income, expenses, assets, liabilities, equity or net worth, any qualified Tennessee credit carryover of the predecessor that merged out of existence shall be available for carryover on the return of the surviving successor; provided the time limitations for the carryover have not expired.

(C) A unitary group of financial institutions may take any qualified credit that was generated by any group member that is in existence as a member of the group at the end of the group's tax year; provided that such credit has not previously been taken by the member itself before it joined the group or by another unitary group of financial institutions at the time the financial institution generating the credit was a member of that group; and provided that the credit carryover shall be subject to the limitations set forth in this subsection.

(8) A credit shall be allowed against the tax imposed by this part in an amount equal to the tax, imposed by Title 67, Chapter 2, paid by the taxpayer.

67-4-2010. (a) Any taxpayer having business activities that are taxable both within and without this State shall allocate or apportion its net earnings or losses as provided in this part.

(b) For purposes of allocation and apportionment of net earnings or losses under this part, a taxpayer is taxable in another state if:

(1) In that state it is subject to a net income tax, a franchise tax measured by net income, a franchise tax for the privilege of doing business, or a corporate stock tax; or

(2) That state has jurisdiction to subject the taxpayer to a net income tax regardless of whether, in fact, the state does or does not.

(c) Nonbusiness receipts shall not be included in the numerator or denominator of any apportionment formula.

67-4-2011. (a) To the extent that they constitute nonbusiness earnings, rents and royalties from real or tangible personal property, capital gains, interest, dividends, or patent or copyright royalties shall be allocated as provided in this section.

(b) (1) Net rents and royalties from real property located in this State are allocable to this State.

(2) Net rents and royalties from tangible personal property are allocable to this State:

(A) If and to the extent that the property is utilized in this State;
or

(B) In their entirety if the taxpayer's commercial domicile is in this State and the taxpayer is not organized under the laws of or taxable in the state in which the property is utilized.

(3) The extent of utilization of tangible personal property in a state is determined by multiplying the rents and royalties by a fraction, the numerator of which is the number of days of physical location of the property in the state during the rental or royalty period in the taxable year, and the denominator of which is the number of days of physical location of the property everywhere during all rental or royalty periods in the taxable year. If the physical location of the property during the rental or royalty period is unknown or unascertainable by

the taxpayer, tangible personal property is utilized in the state in which the property was located at the time the rental or royalty payer obtained possession.

(c) (1) Capital gains and losses from sales of real property located in this State are allocable to this State.

(2) Capital gains and losses from sales of tangible personal property are allocable to this State if:

(A) The property had a situs in this State at the time of the sale;
or

(B) The taxpayer's commercial domicile is in this State and the taxpayer is not taxable in the state in which the property had a situs.

(3) Capital gains and losses from sales of intangible personal property are allocable to this State if the taxpayer's commercial domicile is in this State.

(d) Interest and dividends are allocable to this State if the taxpayer's commercial domicile is in this State.

(e) (1) Patent and copyright royalties are allocable to this State, if and to the extent that, the patent or copyright is utilized by the payer in:

(A) This State; or

(B) A state in which the taxpayer is not taxable and the taxpayer's commercial domicile is in this state.

(2) A patent is utilized in a state to the extent that it is employed in production, fabrication, manufacturing, or other processing in the state or to the extent that a patented product is produced in the state. If the basis of receipts from patent royalties does not permit allocation to states or if the accounting procedures do not reflect states of utilization, the patent is utilized in the state in which the taxpayer's commercial domicile is located.

(3) A copyright is utilized in a state to the extent that printing or other publication originates in the state. If the basis of receipts from copyright royalties does not permit allocation to states or if the accounting procedures do not reflect states of utilization, the copyright is utilized in the state in which the taxpayer's commercial domicile is located.

67-4-2012. (a) Except as may otherwise be provided in this part, all net earnings shall be apportioned to this State by multiplying the earnings by a fraction, the numerator of which shall be the property factor plus the payroll factor plus twice the receipts factor and the denominator of such fraction shall be four (4).

(b) The property factor is a fraction, the numerator of which is the average value of the taxpayer's real and tangible personal property owned or rented and used in this State during the tax period, and the denominator of which is the average value of all the taxpayer's real and tangible personal property owned or rented and used during the tax period. For this purpose property shall include a taxpayer's share of any specific property of a general partnership in which such taxpayer has a partnership interest.

(c) Property owned by the taxpayer is valued at its original cost. Property rented by the taxpayer is valued at eight (8) times the net annual rental rate. Net annual rental rate is the annual rental rate paid by the taxpayer less any annual rental rate received by the taxpayer from subrentals. A lessee's payments to a lessor, or on such lessor's behalf, as part of rent, or in lieu of rent, shall be included as rent in the property factor of the apportionment formula provided by this section. Except with respect to tangible personal property, for purposes of this subsection, payments, such as interest, taxes, insurance, repairs or other items, shall be treated as rent paid by the lessee if they would have been paid by the lessor if the lease contract or other agreement had not specifically provided that they be paid by the lessee.

For purposes of this section, the value of owned or leased mobile or movable property located both within and without Tennessee during a tax period shall be determined on the basis of the total percentage of time such property is within the state during the tax period; provided that the value of an automobile or truck assigned to a traveling employee shall be considered in Tennessee if the employee's compensation is assigned to Tennessee for purposes of the taxpayer's apportionment formula payroll factor or if such vehicle is licensed in Tennessee.

(d) The average value of property shall be determined by averaging the values at the beginning and ending of the tax period, but the commissioner may require the averaging of monthly values during the tax period if reasonably required to reflect properly the average value of the taxpayer's property.

(e) The payroll factor is a fraction, the numerator of which is the total amount paid in this State during the tax period by the taxpayer for compensation, and the denominator of which is the total compensation paid everywhere during the tax period. For this purpose compensation shall include a taxpayer's share of any specific compensation of a general partnership in which such taxpayer has a partnership interest.

(f) Compensation is paid in this State if:

(1) The individual's service is performed entirely within the state;

(2) The individual's service is performed both within and without the state, but the service performed without the state is incidental to the individual's service within the state; or

(3) Some of the service is performed in the state; and

(A) The base of operations or, if there is no base of operations, the place from which the service is directed or controlled is in the state; or

(B) The base of operations or the place from which the service is directed or controlled is not in any state in which some part of the service is performed, but the individual's residence is in this State.

(g) The receipts factor is a fraction, the numerator of which is the total receipts of the taxpayer in this State during the tax period, and the denominator of which is the total receipts of the taxpayer everywhere during the tax period.

For this purpose total receipts shall include a taxpayer's share of any specific sales of a general partnership in which such taxpayer has a partnership interest.

(h) Sales of tangible personal property are in this State if:

(1) The property is delivered or shipped to a purchaser, other than the United States government, within this State regardless of the F.O.B. point or other conditions of the sale; or

(2) The property is shipped from an office, store, warehouse, factory or other place of storage in this State and the purchaser is the United States government.

(i) Sales, other than sales of tangible personal property, are in this State if the earnings-producing activity is performed:

(1) In this State; or

(2) Both in and outside this State and a greater proportion of the earnings-producing activity is performed in this State than in any other state, based on costs of performance.

(j) Notwithstanding any provision of law other than § 67-4-2014 to the contrary, any person doing business in Tennessee, who licenses the use of patents, trademarks, tradenames, copyrights, or know-how, or other intellectual property to another person in Tennessee, and who is paid royalties or other income based on the sale of products or other activity in Tennessee by the licensee, shall source such income to Tennessee for purposes of its apportionment formula receipts factor.

67-4-2013. (a) If the principal business in this State is that of a common carrier of persons or property for hire, then the appropriate ratios shall be as follows:

(1) Railroads. The ratio obtained by taking the arithmetical average of the following two (2) ratios:

(A) The gross receipts from railway operations on business beginning and ending within this State without entering or passing through any other state as compared with its entire gross receipts from such operations within and without the state; and

(B) The mileage owned and operated within Tennessee, plus mileage leased and operated within Tennessee, as compared with the total of such mileage within and without the state.

(2) Motor Carriers. The ratio obtained by taking the arithmetical average of the following two (2) ratios:

(A) The gross receipts from operations on business beginning and ending within this State without entering or passing through any other state as compared with its entire gross receipts from such operations within and without the state; and

(B) The ratio of the total franchise miles, or odometer miles if there are no franchise miles, to which it holds or uses under lease, contract or otherwise, certificates of convenience and necessity from the Interstate Commerce Commission or the Department of Safety within the state, to the total franchise

(or odometer) miles to which it holds or uses certificates from such commission or department, and like commissions, departments or agencies of other states, within and without the state, all as shown by the annual reports made by such motor carrier to the various commissions, departments or agencies from which it holds certificates.

(3) Rail and Motor Carriers. Where the taxpayer is engaged in transporting passengers and property by both rail and motor, then the ratio of the sum of the miles within the state as computed under subdivisions (1) and (2) to the sum of the miles under such subdivisions within and without the state.

(4) Pipelines. The ratio obtained by taking the arithmetical average of the following two (2) ratios:

(A) The gross receipts from operations on business beginning and ending within this State without entering or passing through any other state as compared with its entire gross receipts from such operations within and without the state; and

(B) The ratio of the pipeline miles owned, operated, or owned and operated within the state to the miles of pipeline owned, operated or owned and operated within and without the state.

(5) Air Carriers. The ratio obtained by taking the arithmetical average of the following two (2) ratios:

(A) The originating revenue within the state as compared with the entire originating revenue within and without the state; and

(B) The ratio of the total air miles flown within the state to the total air miles flown within and without the state. Air miles flown within the state shall only include miles in the state from flights originating from or ending in the state, or both originating from and ending in the state.

(6) Air Express Carriers. The ratio obtained by taking the arithmetical average of the following two (2) ratios:

(A) The originating revenue within the state as compared with the entire originating revenue within and without the state; and

(B) The ratio of the total air miles flown and ground miles traveled within the state to the total air miles flown and ground miles traveled within and without the state. Air miles

flown within the state shall only include miles in the state, from flights originating from or ending in the state, or both originating from and ending in the state. Ground miles traveled within the state or traveled within and without the state shall only include miles traveled with respect to the actual common carriage of persons or property for hire.

(b) (1) Notwithstanding any other provision of this part, net earnings of a financial institution that is not filing a combined return and that has business activities both within and without this State shall be apportioned by multiplying such earnings by the quotient of the institution's total receipts attributable to the transaction of business in Tennessee, as determined under subdivision (4), divided by the institution's total receipts attributable to transacting business in all taxing jurisdictions, as determined under subdivision (4).

(2) A unitary group shall have earnings apportioned to Tennessee which consists of the apportioned net earnings of the members of the unitary group as determined under the provisions of subdivision (1).

(3) For purposes of subdivision (1), receipts shall include all gross income, including net taxable gain on disposition of assets such as securities and money market transactions, when derived from transactions and activities in the regular course of business.

(4) Receipts, as used in this section, shall be attributed to Tennessee as follows:

(A) Receipts from the lease or rental of real or tangible personal property shall be attributed to Tennessee if the property is located in Tennessee;

(B) (i) Interest income and other receipts from assets in the nature of loans or installment sales contracts that are primarily secured by or deal with real or tangible personal property shall be attributed to Tennessee if the security or sale property is located in Tennessee. If any part of the sale property or property standing as security for the payment of the debt is located part within and part without the state, only such proportion of the interest income or other receipts shall be attributed to Tennessee as the value of the property within the state bears to the whole property;

(ii) "Value" means only that value which the property would command at a fair and voluntary sale. Value shall be determined at the time the loan is made and shall not vary from year to year. In the event additional real or tangible personal property is pledged as security or otherwise covered under a loan or installment sales contract after the time the loan is made, the ratio based on the value of the property in the state compared to the whole property shall be adjusted;

(C) Interest income and other receipts from consumer loans not secured by real or tangible personal property shall be attributed to Tennessee if the loan is made to a resident of Tennessee, whether at a place of business, by a traveling loan officer, by mail, telephone or other electronic means;

(D) Interest income and other receipts from commercial loans and installment obligations not secured by real or tangible personal property shall be attributed to Tennessee if the proceeds of the loan are to be applied in Tennessee. If it cannot be determined where the funds are to be applied, the receipts are to be attributed to the state in which the business applied for the loan. As used in this subdivision, "applied for" means initial inquiry (including customer assistance in preparing the loan application) or submission of a completed loan application, whichever occurs first. For attribution purposes, "loan" does not include demand deposit clearing accounts, federal funds, certificates of deposit, and other similar wholesale banking instruments issued by other financial institutions;

(E) All receipts and fee income from the issuance of letters of credit, acceptance of drafts, and other devices for assuring or guaranteeing a loan or credit shall be attributed in the same manner as interest income and other receipts from the loan are attributed as set out in subdivision (2)(B), (C), or (D);

(F) Interest income, merchant discount, other receipts (including service charges from financial institution credit card and travel and entertainment credit card receivables and credit card holders), and fees shall be attributed to the state to which the card charges and fees are regularly billed;

(G) Receipts from the sale of an asset, tangible or intangible, shall be attributed in the same manner that the income from the asset would be attributed under this subsection;

(H) Receipts from the performance of fiduciary and other services shall be attributed in accordance with § 67-4-2012(i);

(I) Receipts from the issuance of traveler's checks, money orders or United States savings bonds shall be attributed to the state where such items are purchased; and

(J) Receipts from a participating financial institution's portion of participation loans shall be attributed as otherwise provided under this subsection. A participation loan is any loan in which more than one (1) lender is a creditor to a common borrower.

(c) Insurance companies shall apportion net earnings by a ratio of their premiums on policies, persons and property within and without the state; however, foreign insurance companies, not domiciled in Tennessee, shall not consider nor include any annuity considerations as premiums for purposes of this section.

67-4-2014. (a) If the tax computation, allocation or apportionment provisions of this part do not fairly represent the extent of the taxpayer's business activity in this State, or the taxpayer's net earnings, the taxpayer may petition for, or the department through its delegates may require, in respect to all or any part of the taxpayer's business activity, if reasonable:

(1) Separate accounting;

(2) The exclusion of any one (1) or more of the formula factors;

(3) The inclusion of one (1) or more additional apportionment formula factors which will fairly represent the taxpayer's business activity in this State;

(4) The use of any other method to source receipts for purposes of the receipts factor(s) of the apportionment formula numerator(s); or

(5) The employment of any other method to effectuate an equitable computation, allocation and apportionment of the taxpayer's net earnings or losses that fairly represents the extent of the business entity's activities in Tennessee.

(b) If any factors are excluded from or added to the statutory apportionment formula, an appropriate change shall be made in the number used as the denominator of the fraction.

(c) (1) In any case of two (2) or more persons, organizations, trades or businesses (whether or not incorporated and whether or not affiliated) owned or controlled directly or indirectly by the same interests, the commissioner through delegates may distribute, apportion, or allocate income, deductions, credits, or allowances between or among such persons, organizations, trades or businesses, if the commissioner determines that such distribution, apportionment, or allocation is necessary in order to prevent evasion of taxes, excessive use or abuse of exemptions, or to clearly reflect the income of such persons, organizations, trades or businesses. In addition, the commissioner through delegates may require combined reports utilizing a common apportionment formula covering members of an affiliated group of corporations. It is the intent of the General Assembly that the federal regulations, rulings, and court implementations with respect to 26 U.S.C. Section 482 be used as guidance in the administration of this provision.

(2) In the case of two (2) or more entities owned or controlled directly or indirectly by the same persons (including but not limited to controlled groups as defined in Section 267 (f) of the Internal Revenue Code), the commissioner, through the commissioner's delegates, may require combined reports and, if applicable, the utilization of a common apportionment formula covering such entities.

(3) The commissioner may apply federal taxation concepts, including but not limited to, "assignment of income", "arms length", and "fair market value" to dealings between and among persons identified in Section 267 (b) of the Internal Revenue Code.

(4) The commissioner may disregard any entity created or transaction made which has no business purpose or is created or made with the primary purpose of evading either the federal income tax or the excise tax.

(5) For purposes of this subsection, "affiliated group" has the same meaning as set forth in Section 1504 of the Internal Revenue Code.

(d) When another method of tax computation, allocation or apportionment as set out above has once been established, it shall continue in effect so long as the circumstances justifying the variation remain substantially unchanged, or until changed or discontinued by the department, whichever occurs first. In the event that the department changes or discontinues a variation

from the statutory computation, allocation or apportionment provisions that has been granted to or required of a taxpayer, reasonable notice shall be given to the taxpayer affected and any such change or discontinuation shall apply prospectively to the first and subsequent tax periods beginning on or after the date of such notice.

(e) For tax years beginning on or before December 31, 2006, a hospital company, as defined in § 67-4-2004(12), shall file its franchise, excise tax return on a combined basis, together with all other corporations or other entities subject to the taxes imposed under Part 20 and Part 21 of this chapter that are members of its controlled group (as defined in § 267(f)(1) of the Internal Revenue Code), and that are doing business in and taxable by this State, apportioned or allocated as to each member separately as herein provided in §§ 67-4-2011 and 67-4-2012, and then combined. Such combined franchise, excise tax returns shall be signed on behalf of one (1) member of the combined controlled group for itself and on behalf of the other members of the combined controlled group, and such signature shall constitute representation and evidence of authority to file on behalf of all members of the combined controlled group. The combined return shall contain all financial statements and schedules that would be required of each member filing a separate franchise, excise tax return. Each member's net earnings or losses subject to carryover, as the case may be, and each member's apportionment ratio, and applicable supporting schedules shall be computed separately as would be required by law if no combined return were required. The franchise, excise tax shall be computed for the combined group based on the combined net earnings or net losses of the members as combined and shown on the combined return filed for members of the controlled group of companies doing business in this State. The losses available to each member of the controlled group under current or prior law shall be available for offset against the net earnings of the combined group in the first year of filing on a combined basis, and any portion that is not used to offset net earnings of the combined group in the first combined year shall be carried forward on a combined basis to be available as an offset to future net earnings of the combined group in accordance with and subject to the time limitations set forth in § 67-4-2006(c)(1); provided, that such combination shall not extend the time limitation of any then existing net operating losses. No member of the combined group may file its franchise, excise tax return on a separate basis without the consent of the commissioner.

67-4-2015. (a) The franchise and excise tax return shall be filed with the Commissioner of Revenue on or before the fifteenth day of the fourth month following the close of the taxpayer's taxable year. The return shall coincide with the accounting period covered by the federal return and the appropriate tax must be paid to the department at the time of filing the return.

(b)(1) Every taxpayer, who has a combined franchise and excise tax liability of five thousand dollars (\$5000) or more for the prior tax year or for the current tax year, shall make four (4) quarterly estimated franchise and excise tax payments for its current tax year. The minimum amount of each quarterly payment shall be the lesser of:

(A) Twenty-five percent (25%) of the combined franchise and excise tax liability for the preceding tax year, annualized if the preceding tax year was for less than twelve (12) months; or

(B) Twenty-five percent (25%) of eighty percent (80%) of the combined franchise and excise tax liability for the current tax year; provided, however, that for tax years beginning on or after July 1, 1999,

and before July 1, 2000, the minimum amount of each quarterly payment shall be the greater of subitem (A) of this subsection, or twenty-five percent (25%) of fifty percent (50%) of the franchise and excise tax liability for the current tax year.

(c) The first quarterly payment shall be due on the fifteenth day of the fourth month of the current tax year; the second payment on the fifteenth day of the sixth month; the third payment on the fifteenth day of the ninth month; and the final payment on the fifteenth day of the first month of the next succeeding tax year.

(d) If there is a deficiency or delinquency of any quarterly estimated tax payment required, a penalty in the amount of five percent (5%) for each month of underpayment or part thereof not to exceed a total of twenty-five percent (25%) and interest at the rate prescribed by Section 67-1-801 shall be assessed.

(e) The period of underpayment of any required quarterly estimated franchise and excise tax payment shall extend from the date the payment was required to be paid to the earlier of:

(1) The fifteenth day of the fourth month following the close of the taxable year; or

(2) With respect to all or any portion of the underpayment, the date on which all or any portion of the underpayment is paid.

(f) A quarterly payment of estimated franchise and excise tax on any installment date shall be considered a payment of any previous underpayment only to the extent such payment exceeds the amount of the installment payable for that date.

(g) An extension of time of six (6) months in which to file the franchise and excise tax return will be granted, provided that, on or before the original due date of the return, the taxpayer has paid franchise and excise taxes equal to one hundred percent (100%) of the liability for the tax year for which the extension is being requested, and the extension request is made on a form prescribed by the department. Where the taxes paid on or before the original due date of the return do not equal one hundred percent (100%) of the liability for the tax year for which the extension is being requested, or if the return is not filed by the extended due date, penalty as provided by §67-1-804 and interest as provided by §67-1-801(a) shall attach as though no extension had been granted.

(h) Notwithstanding the provisions of Section 67-1-803(a)(2)(A), the commissioner may waive any franchise and excise tax penalty imposed on any taxpayer who was not subject to the prior franchise and excise tax law and who failed to register with the department for the franchise and excise tax; provided, however, that this provision shall apply only to tax years beginning on or after July 1, 1999, and before July 1, 2000.

67-4-2016. (a) The commissioner is empowered and it is the commissioner's duty to collect the tax, together with penalty and interest, levied hereunder from any officer, stockholder, partner, member, principal, or employee of a taxpayer that is out of business or has dissolved, liquidated, otherwise terminated at a time when it has refused or failed to pay the excise tax levied under this part, and any such officer, stockholder, partner, member, principal, or

employee has received property belonging to the taxpayer, but such collection shall be limited to the value of the property received.

(b) The commissioner is empowered to certify to the Secretary of State the name of any taxpayer which fails or refuses to file any statement or return or to pay any fee or tax herein required; however, no certification shall be issued until such statement, return, or tax has remained delinquent for a period of ninety (90) days.

(c) At the time of such certification to the Secretary of State, the commissioner shall give notice to the taxpayer of the action taken. Thereupon, the charter or certificate of such taxpayer or its domestication in Tennessee shall stand as automatically dissolved or revoked and the Secretary of State shall note such revocation or dissolution upon the Secretary of State's records.

(d) At any time after the date of revocation or dissolution, such charter or certificate or domestication may be reinstated upon the filing of all reports and the payment of all fees, taxes, penalty and interest due the state; provided, that the title has not been taken by another taxpayer.

67-4-2017. (a) All the taxes collected under this part shall be applied as follows:

(1) To cities and counties, an amount for each bank with a deposit facility in this State and each financial institution unitary business as defined in this section:

(A) Three percent (3%) of the net earnings of the bank and the net earnings of a financial institution unitary business determined on a combined basis for the fiscal year second preceding the year in which the distribution under this section is made, less seven percent (7%) of the ad valorem taxes paid by the bank or financial institution unitary business on its real property and tangible personal property for the fiscal year second preceding the year in which the distribution is made. For the purposes of this subdivision, "net earnings," as applicable to either a bank or financial institution unitary business, does not include amounts attributable to interest earned on bonds and other obligations of the State of Tennessee. As used in this section, "financial institution unitary business" includes only those financial institutions which form a unitary business as defined in § 67-4-2004(22), which file a combined franchise, excise tax return in Tennessee and which have at least one (1) member with a deposit facility in Tennessee. The total amount thus determined shall be allocated between the county and municipal governments where the office of the bank or financial institution unitary business is located in the same proportion as the property tax rate of each such taxing jurisdiction shall bear to the sum of the property tax rates;

(B) In circumstances where a bank or financial institution unitary business has more than one (1) branch or office, the total allocation attributable to such bank or financial institution unitary business as determined above shall be further allocated between such counties and cities where its branches or offices are located as follows:

(i) The proportionate percentage that is produced by the ratio of the deposits of each branch or office of the bank or financial institution unitary business to the total deposits of the bank or financial institution unitary business shall be determined as of January 1 of each year, and the percentage so determined shall then be applied to the total allocation to determine the portion of the total attributable to each branch or office;

(ii) The branches or offices shall then be grouped each to a common location so as to determine the aggregate allocation of all branches or offices located in each individual county and municipality; and

(iii) The percentage of the total allocation allowable to each county and municipality shall be divided between the county and municipality where the branch or office is maintained in the same proportion as the property tax rates of each for the year second preceding the year in which the distribution under this section is made shall bear to the total of the property tax rates;

(C) The director of the division of property assessments shall provide to the commissioner, periodically on a timely basis, the ad valorem property tax rates for each taxing jurisdiction. The commissioner shall report the amount of such allocations made to each county and municipality to the Comptroller of the Treasury for audit purposes on an annual basis.

(D) The status of each bank or financial institution unitary business as of January 1 of the fiscal year for which the allocation is calculated shall be the determining status;

(E) If the net earnings of any bank or financial institution unitary business shall be redetermined for any period in accordance with this part, the commissioner shall recalculate the allocation attributable to such bank or financial institution unitary business, and any indicated increase or decrease in allocation shall be effected in the next succeeding general allocation to the respective county and municipal governments, as appropriate; and

(F) The commissioner has the authority and power to prescribe forms upon which all banks or financial institution unitary businesses shall report such facts and information as will enable the department to ascertain the correctness of the allocation. The department has the full power to summon witnesses, to inspect or require the production of books and papers, and to obtain and consider any evidence and records other than the reports submitted by such banks or financial institution unitary businesses which it may deem proper or necessary to carry out its responsibilities under subdivision (a)(1). If any bank or financial institution unitary business subject to the provisions of this part fails, refuses or neglects to collect

and file such form with the department as herein provided, the department shall determine the amount of the allocation in regard to such bank or financial institution unitary business on the basis of the best information available; and

(2) After allocations to counties and municipalities as provided above, the remainder of the taxes collected under this part shall be applied to and become a part of the general fund of the state.

(b) The General Assembly is hereby exercising its discretion granted in Tennessee Constitution, Article II, § 28 to establish the manner in which banks shall be taxed. The allocation of taxes to local governments herein provided shall be in lieu of the taxation of the subclassification of intangible personal property designated as "shares of banks and banking associations," and all taxes on the redeemable or cash value of all their outstanding shares of capital stock, certificates of deposit and certificates of investment, by whatever name called, of such bank or banking association; provided, that such bank or banking association shall nonetheless continue to be subject to ad valorem taxes on its real property and tangible personal property and all other taxes to which it is currently subject.

SECTION 4. Tennessee Code Annotated, Title 67, Chapter 4, is amended by adding the following new part:

PART 21 - FRANCHISE TAX LAW OF 1999

67-4-2101. This part may be cited and referred to as the "Franchise Tax Law of 1999."

67-4-2102. The tax herein imposed is a state tax for state purposes only and no county or municipality or taxing district shall have power to levy any like tax.

67-4-2103. (a) The supervision and collection of the tax imposed by this part is under the direction of the Department of Revenue, and such department has the authority and power to prescribe forms upon which entities liable for the tax imposed shall make reports of such facts and information as will enable the commissioner to ascertain the correctness of the amount reported and paid by such entities.

(b) The commissioner may, within the commissioner's discretion, require any taxpayer to file with its Tennessee franchise tax return, a copy of the federal tax forms filed with the Internal Revenue Service for the same tax year.

(c) All persons subject to the tax imposed by this part shall register with the Department of Revenue by completing and filing a registration information form prescribed by the department. Such form shall be filed with the department within sixty (60) days after July 1, 1999 or within fifteen (15) days after the date the person becomes subject to the tax, whichever date occurs last; provided, however, that persons registered under prior law, or who have filed a return under prior law, are not required to register for the tax imposed by this part.

67-4-2104. Doing business in Tennessee by any person or taxpayer, and/or exercising the corporate franchise, are hereby declared to be taxable privileges. The tax is an accrued tax and is imposed for the exercise of the

specified privilege during the period that coincides with the tax year covered by the return required.

67-4-2105. (a) All persons doing business in Tennessee, or exercising the corporate franchise, except those having not-for-profit status or exempt under Section 67-4-2008, shall pay to the Commissioner of Revenue annually a privilege tax in addition to all other taxes, the rate and measure of which are hereinafter set forth. The tax shall be paid for the privilege of doing business in Tennessee, or exercising the corporate franchise, and shall be in addition to all other taxes levied by any other statute. Notwithstanding the fact that a person is not-for-profit or otherwise exempted from the franchise tax, such person shall be subject to the franchise tax on any activities unrelated to and outside the scope of the activities that gave it an exemption status.

(b) Every such taxpayer shall, as a recompense for the protection of its local activities and as compensation for the benefits it receives from doing business in Tennessee, pay the tax imposed by this part.

(c) The tax imposed by this part shall apply to taxpayers whose business is being conducted by a receivership or trusteeship appointed by any court of competent jurisdiction, and shall continue to accrue until such time as the taxpayer has been actually and legally dissolved or withdrawn from this State.

(d) (1) A financial institution shall be presumed, subject to rebuttal, to be doing business in this State if the sum of its assets and the absolute value of its deposits attributable to sources within this State is five million dollars (\$5,000,000) or more.

(2) Additionally, a financial institution shall be deemed to be doing business in this State if the institution:

(A) Maintains an office in this State;

(B) Has an employee, representative or independent contractor conducting business in this State;

(C) Regularly sells products or services of any kind or nature to customers in this State that receive the product in this State;

(D) Regularly solicits business from potential customers in this State;

(E) Regularly performs services outside this State which are consumed in this State;

(F) Regularly engages in transactions with customers in this State that involve intangible property, including loans, and result in receipts flowing to the taxpayer from within this State;

(G) Owns or leases property located in this State; or

(H) Regularly solicits and receives deposits from customers in this State.

(e) Notwithstanding any other provision to the contrary, a financial institution is not considered to be conducting the business of a financial institution

in this State if the only activity of the financial institution in this State is the ownership of an interest in one (1) or more of the following types of property, including those activities within this State that are reasonably required to evaluate and complete the acquisition or disposition of the property, or the servicing of the property, or the income from it, the collection of income from the property, or the acquisition or liquidation of the collateral relating to the property:

(1) An interest in a real estate mortgage investment conduit, a real estate investment trust, or a regulated investment company as those terms are defined by the Internal Revenue Code of 1986, as amended;

(2) An interest in a loan-backed security representing ownership or participation in a pool of promissory notes or certificates of interest that provide for payments in relation to payments or reasonable projections of payments on the notes or certificates;

(3) An interest in a loan, lease, note or other assets attributed to this State and in which the payment obligations were solicited and entered into by a person that is independent and not acting on behalf of the owner;

(4) An interest in the right to service or collect income from a loan or other asset from which interest on the loan or other asset is attributed to this State and in which the payment obligations were solicited and entered into by a person that is independent and not acting on behalf of the owner;

(5) An interest in demand deposit clearing accounts, federal funds, certificates of deposit and other similar wholesale banking instruments issued by other financial institutions;

(6) An interest in a security;

(7) An interest of a financial institution in any intangible, tangible, real or personal property acquired in satisfaction, whether in whole or in part, of any asset embodying a payment obligation which is in default, whether secured or unsecured, if the ownership of the interest would be exempt otherwise as provided in subsection (e)(1)-(4);

(8) For the purposes of subsection (e) (3) and (4), an "independent person who is not acting on behalf of the owner" is defined as follows:

(A) At the time of the acquisition of the assets, the owner of the assets shall not directly or indirectly own fifteen percent (15%) or more of the outstanding stock or, in the case of a partnership, fifteen percent (15%) or more of the capital or profits interest of the entity from which the owner originally acquired the assets. In determining indirect ownership, an owner is deemed to own all of the stock, capital interest or profits interest owned by another person if the owner directly owns fifteen percent (15%) or more of the stock, capital interest or profits interest in that other person. Also, the owner is deemed to own all stock, capital interest and profits interest directly owned by any intermediary parties in the transaction, to the extent a fifteen percent (15%) or more chain of ownership of

stock, capital interest or profits interest exists between the owner and any intermediary party;

(B) The entity from which the owner acquired the assets shall regularly sell, assign or transfer interest in such assets to three (3) or more persons during the full twelve-month period immediately preceding the month of acquisition; and

(C) The entity from which the owner acquired the assets shall not sell, assign or transfer ninety percent (90%) or more of its exempt assets to the owner during the full twelve-month period immediately preceding the month of acquisition.

67-4-2106. (a) The privilege tax hereby imposed on all taxpayers shall be a tax of twenty-five cents (25¢) per one hundred dollars (\$100), or major fraction thereof, of a taxpayer's net worth, determined in accordance with generally accepted accounting principles, at the close of the tax year covered by the required return.

(b) For purposes of this section, "net worth" is defined as the difference between the value of a taxpayer's total assets less its total liabilities determined in accordance with generally accepted accounting principles for the tax year covered by the required return. Proper reductions of asset and liability accounts used to determine net worth for franchise tax purposes will be allowed if they are in accordance with generally accepted accounting principles. Treasury stock shall not be considered a part of the net worth of a corporation.

67-4-2107. (a) Where a corporation doing business without surplus or undivided profits has had the value of its capital stock impaired by operating deficits or other business losses, such as fire, flood, tornado, or other natural disasters, and where such deficit or loss is carried upon the books and records of the corporation as an impairment of capital, the measure of the tax shall be diminished by such loss or deficit.

(b) The value of an interest, determined in accordance with generally accepted accounting principles, held by the taxpayer in any other taxpayer paying the tax herein levied and actually doing business in this State shall be deducted from the measure of the tax of the first taxpayer.

(c) (1) If the capital stock of a corporation which is a subsidiary of another corporation or closely affiliated therewith by stock ownership is inadequate for its business needs apart from credit extended or indebtedness guaranteed by the parent or an affiliated corporation, in determining the amount of capital, surplus and undivided profit of such corporation with respect to its liability for the tax imposed by this part, there shall be included in the measure of the tax the indebtedness owed to or guaranteed by the parent or an affiliated corporation. If necessary to apportion such indebtedness, the methods of allocation hereinafter set forth shall be used.

(2) For purposes of this section, "closely affiliated" corporation does not include a foreign entity operating in the United States for the purpose of facilitating the financing of United States operations of the affiliated group. "Foreign entity" for purposes of this section is a corporation created or organized under the laws of a foreign country, the United States or any state, and which has less than twenty percent (20%) of its average tangible property and average payroll assigned to locations within the United States and the District of

Columbia. The provisions of this subdivision are repealed on September 30, 1999, and shall not apply to any tax year ending after September 30, 1999.

(3) (A) Notwithstanding the provisions of this subsection to the contrary, any corporation that, pursuant to the provisions of subdivision (c)(2), has excluded any indebtedness to or guaranteed by a parent or an affiliated corporation in determining the amount of its capital, surplus and undivided profits subject to franchise tax, shall provide the commissioner with an additional computational schedule to supplement its franchise, excise tax return. This schedule shall be filed with the return or within ninety (90) days from April 23, 1998 if the return has already been filed. It shall show the corporation's total indebtedness to or guaranteed by its parent or any affiliated corporation, and a computation of the amount of any indebtedness that would have been included in the determination of its capital, surplus and undivided profits subject to franchise tax had it not been for the provisions of subdivision (c)(2).

(B) Any corporation that fails to timely file the schedule required by subdivision (A) shall be expressly prohibited from relying upon subdivision (c)(2) to exclude any of its indebtedness to or guaranteed by a parent or affiliated corporation from its franchise tax base. In such a case, the commissioner shall disregard the provisions of subdivision (c)(2) for the tax year involved and shall assess any resulting additional franchise tax plus interest accrued from the original due date of the return.

67-4-2108. (a)(1) The measure of the tax hereby imposed shall in no case be less than the actual value of the property owned, or property used, in Tennessee, excluding exempt inventory.

(2) There shall not be included within the meaning hereof the value of any property while construction of same is in progress and, in addition thereto, there is no actual utilization of such property by the taxpayer either in whole or in part.

(3) In cases where part or all of the property is rented, the actual value of property will be deemed to be the book value, according to generally accepted accounting principles, of all property owned as shown by the books and records of the taxpayer at the close of its last fiscal year preceding the making of the sworn report hereinafter required (excepting books with respect to investment costs kept pursuant to regulations of the Interstate Commerce Commission), plus the value of the rental property used which shall be determined by multiplying the net annual rental by the following multiples:

Multiples

- (a) Real property8
- (b) Machinery and equipment used in manufacturing
and processing3
- (c) Furniture, office machinery and equipment2
- (d) Delivery or mobile equipment1

(4) "Net annual rental" means the gross annual rental paid by the taxpayer, less the gross rental received by the taxpayer for sub-rental. A lessee's payments to a lessor, or on such lessor's behalf, as part of rent, or in lieu of rent, shall be considered rent for

purposes of this section. Except with respect to tangible personal property, for purposes of this subsection, payments, such as interest, taxes, insurance, repairs or other items, shall be treated as rent paid by the lessee if they would have been paid by the lessor if the lease contract or other agreement had not specifically provided that they be paid by the lessee.

For purposes of this section, the value of owned or leased mobile or movable property located both within and without Tennessee during a tax period shall be determined on the basis of the total percentage of time such property is within the state during the tax period; provided that the value of an automobile or truck assigned to a traveling employee shall be considered in Tennessee if the employee's compensation is assigned to Tennessee for purposes of the taxpayer's apportionment formula payroll factor or if such vehicle is licensed in Tennessee.

(5) For the purposes of this section, "used" means only such property as is actually utilized by the taxpayer in the conduct of its principal business.

(6) (A) For purposes of this section, any system, method, improvement, structure, device or appliance appurtenant thereto, used primarily for the control, reduction, or elimination of water or air pollution, or used primarily for the disposal, treatment or recycling of hazardous waste, and required to meet mandatory requirements of state, federal or local law, shall not be deemed to be property that is actually utilized by the taxpayer in the conduct of its principal business. Copies of certificates provided for in Section 67-5-604 shall be furnished to the commissioner by the taxpayer with the franchise tax return to verify exemption.

(B) This exemption shall apply only to property, the construction, reconstruction or erection of which is completed by the taxpayer during corporate fiscal years ending on or after July 15, 1981, or which is acquired by the taxpayer during such fiscal years, and the original use of which commences with the taxpayer and commences during such fiscal years.

(7) For purposes of this section, "property" shall include a taxpayer's share of any specific property in a general partnership in which such taxpayer has a partnership interest.

(8) "Exempt inventory" means that portion of a taxpayer's finished goods inventory in excess of fifty million dollars (\$50,000,000) for fiscal years beginning on or after July 15, 1996, forty million dollars (\$40,000,000) for fiscal years beginning on or after July 15, 1997, and thirty million dollars (\$30,000,000) for fiscal years beginning on or after July 15, 1998, that would otherwise be included in the minimum measure of the taxpayer's franchise tax base.

(9) "Finished goods inventory" means tangible personal property which is:

(A) Owned by the taxpayer;

(B) Shown on the taxpayer's books and records kept in accordance with generally accepted accounting principles;

(C) Held for wholesale or retail sale; and

(D) In need of no further fabrication or processing by or for the owner; except, in the case of configuring, testing or packaging of computer products.

(10) "Configuring" computer products means integrating a computer with peripheral computer products, such as a hard disk drive, additional memory or software.

(b) In the case of property leased from an industrial development corporation, formed pursuant to Title 7, Chapter 53, Part 1, the value may be determined either in accordance with subsection (a) or, at the taxpayer's election, by capitalizing the lease on taxpayer's books and records in accordance with generally accepted accounting principles. The taxpayer may change its election not more than once during the term of the lease.

67-4-2109. (a) In accordance with § 56-4-217, there shall be credited upon the tax hereby imposed the net amount of gross premiums tax paid which is measured by a period that corresponds to the franchise tax period on which the return is based, plus any amount used to offset payment to the Tennessee guaranty association which has not otherwise been recovered, but not including the gross premiums receipts tax paid by fire insurance companies for the purpose of executing the fire marshal law.

(b) (1) There shall be allowed a credit for any taxpayer against the tax imposed under this part for any income year, in an amount equal to twenty-five percent (25%) of total expenditures paid or incurred by such taxpayer in such income year for planning, site preparation, construction, renovation or acquisition of facilities for the purpose of establishing a child day care facility to be used primarily by the children of such taxpayer's employees and equipment installed for permanent use within or immediately adjacent to such facility, including kitchen appliances, to the extent that such equipment or appliances are necessary in the use of such facility for purposes of child day care; provided, that such facility is operated under the authority of a license issued by the Department of Human Services, and that the amount of tax credit allowed any taxpayer under the provisions of this section for any income year may not exceed twenty-five thousand dollars (\$25,000). If two (2) or more taxpayers share in the cost of establishing such a facility for the children of their employees, each such taxpayer shall be allowed such credit in relation to the respective share paid or incurred by such taxpayer, of the total expenditures for the facility in such income year. If the amount of such tax credit allowed any taxpayer for any income year exceeds the amount of tax, without reduction for such tax credit, any balance of the credit remaining may be claimed against the tax imposed for any of the three (3) income years next succeeding; provided, that any such balance of credit may not be claimed for any such succeeding income year in which the child day care facility is operated for purposes of child day care for less than six (6) months.

(2) The credits permitted under subdivision (b)(1) shall be allowed only under the following conditions:

(A) The credits shall only apply to projects for which an application for a building permit for the project is made after May 2, 1994.

(B) Applications as submitted to the Department of Revenue for the credit shall be approved in the order that applications for building permits are filed.

(C) For each application approved for credit, it shall be assumed that credit will be twenty-five thousand dollars (\$25,000) for the fiscal year in which the application is approved and the ensuing two (2) fiscal years for purposes of limiting credits as set forth in subdivision (b)(2)(D).

(D) Applications shall be limited to those that would result in no greater credit in any fiscal year than one hundred thousand dollars (\$100,000) based upon the assumption set forth in subdivision (b)(2)(C).

(c) (1) As used in this subsection, unless the context otherwise requires:

(A) "Full-time employee job" or "full-time employees" means a permanent, rather than seasonal or part-time, employment position providing employment in a qualified business enterprise for at least twelve (12) consecutive months to a person for at least thirty-seven and one-half (37 1/2) hours per week with minimum health care, as described in Title 56, Chapter 7, Part 22;

(B) "Qualified business enterprise" means an enterprise in which a business has made the "required capital investment" in Tennessee in real or tangible personal property necessary to permit the creation or expansion of manufacturing, warehousing and distribution, processing tangible personal property, research and development, computer services, call centers, corporate offices, or convention or trade show facilities; and

(C) "Required capital investment," except for convention or trade show enterprises, means an increase of a business investment of five hundred thousand dollars (\$500,000) on or after January 1, 1993, in real or tangible personal property owned in Tennessee, and/or leased property in Tennessee valued according to § 67-4-2108(a) or (b). For businesses engaged in convention or trade show enterprises, the "required capital investment" means an increase of business investment of ten million dollars (\$10,000,000) on or after January 1, 1993, in such property in the same manner described for other enterprises.

(2) (A) A job tax credit of two thousand dollars (\$2,000) for each net new full-time employee job shall be allowed against a taxpayer's franchise and/or excise tax liability for that year; provided, that:

(i) The job filled is for a position newly created in Tennessee, and, for at least ninety (90) days prior to being filled by the taxpayer, did not exist in Tennessee as a job position of the taxpayer or of another business entity;

(ii) The job position was filled during the tax year and was in existence at the end of the tax year;

(iii) The taxpayer has met the required capital investment in the qualified business enterprise;

(iv) The credit shall first apply in the tax year in which the qualified business enterprise increases net full-time employment by twenty-five (25) or more jobs, and in those subsequent fiscal years in which further net increases occur

above the level of employment established when the credit was last taken; and

(v) The new full-time employee jobs are filled prior to January 1, 2008.

(B) If the business enterprise is located in an economically distressed county, as defined by the Department of Economic and Community Development, the credit allowed in subdivision (c)(2)(A) shall be three thousand dollars (\$3,000) for each net new full-time job.

(C) A taxpayer shall file a business plan with the Commissioner of Revenue in order to qualify for the job tax credit. The business plan shall be filed on or before the last day of the fiscal year in which the investment is made and shall describe the investment made, the number of jobs the investment will create and the expected dates such jobs will be filled.

(D) The Commissioner of Revenue has the authority to conduct audits or require the filing of additional information necessary to substantiate or adjust the findings contained within the business plan, and to determine that the business enterprise has complied with all statutory requirements so as to be entitled to the job tax credit.

(E) Any unused job tax credit incurred for a tax year beginning prior to July 1, 1999, may be carried forward for fifteen (15) years after the fiscal year in which the credit originated, subject to the limitations established by prior law. Any unused job tax credit incurred for a tax year beginning on or after July 1, 1999, may be carried forward for fifteen (15) years after the tax year in which the credit originated.

(F) For job tax credits incurred in tax years beginning on or after July 1, 1999, the amount of the credit or any carryforward thereof shall be limited as follows:

<u>Percent of Total Franchise And/or Excise Tax Liability be Offset by the Job Tax Credit</u>	<u>Total Number of Tennessee Full-Time Employees At the Allowed to End of the Fiscal Year</u>
33 1/3%	Less than 1,000
50%	1,000 or more but less than 3,000
75%	3,000 or more, but less than 5,000
100%	5,000 or more

(d) When an audit of a tax return for any year not barred by the statute of limitations discloses a change in the amount of tax due, there may be applied upon it as a credit any amount which the taxpayer is otherwise entitled to receive either as a credit under Parts 4-6 of this chapter for franchise taxes paid, or as a refund thereof under § 67-1-707. This tax credit allowance may be applied, notwithstanding the statute of limitations or the requirement for approval of certain refunds by the commissioner and the Attorney General and Reporter if such was made under § 67-1-707, and also any statutory or regulatory requirement under various sections of Parts 4-6 of this chapter that the franchise tax be paid prior to the allowance of any credit.

(e)(1) Each taxpayer is considered a separate entity; therefore, in the case of mergers, consolidations, and like transactions, no tax credit incurred by the predecessor taxpayer shall be allowed as a deduction on the tax return filed by the successor taxpayer. With the exception set forth in subdivision (2) below, a credit carryforward may be taken only by the taxpayer that generated it.

(2) Notwithstanding the provisions contained in subdivision (1), when a taxpayer merges out of existence and into a successor taxpayer that has no income, expenses, assets, liabilities, equity or net worth, any qualified Tennessee credit carryover of the predecessor that merged out of existence shall be available for carryover on the return of the surviving successor provided the time limitations for the carryover have not expired.

(3) A unitary group of financial institutions may take any qualified credit that was generated by any group member that is in existence as a member of the group at the end of the group's tax year provided that such credit has not previously been taken by the member itself before it joined the group or by another unitary group of financial institutions at the time the financial institution generating the credit was a member of that group and provided that the credit carryover shall be subject to the limitations set forth in this subsection.

67-4-2110. (a) Any taxpayer having business activities that are taxable both within and without this State shall allocate or apportion its net worth as provided in this part.

(b) For purposes of allocation and apportionment of net worth under this part, a taxpayer is taxable in another state if:

(1) In that state it is subject to a net income tax, a franchise tax measured by net income, a franchise tax for the privilege of doing business, or a corporate stock tax; or

(2) That state has jurisdiction to subject the taxpayer to a net income tax regardless of whether, in fact, the state does or does not.

(c) Nonbusiness receipts shall not be included in the numerator or denominator of any apportionment formula.

67-4-2111. (a) Except as may otherwise be provided in this part, the net worth of a taxpayer doing business both within and without Tennessee shall be apportioned to this State by multiplying such values by a fraction, the numerator of which shall be the property factor plus the payroll factor plus twice the receipts factor and the denominator of such fraction shall be four (4).

(b) (1) The property factor is a fraction, the numerator of which is the average value of the taxpayer's real and tangible personal property, excluding exempt inventory as defined in § 67-4-2108(a)(8), owned or rented and used in this State during the tax period, and the denominator of which is the average value of all the taxpayer's real and tangible personal property, excluding exempt inventory, owned or rented and used during the tax period.

(2) For purposes of this section, "property" shall include a taxpayer's share of any specific property in a general partnership in which such taxpayer has a partnership interest.

(c) Property owned by the taxpayer is valued at its original cost. Property rented by the taxpayer is valued at eight (8) times the net annual rental rate. Net annual rental rate is the annual rental rate paid by the taxpayer, less any annual rental rate received by the taxpayer from sub-rentals. A lessee's payments to a lessor, or on such lessor's behalf, as a part of rent, or in lieu of rent, shall be included as rent in the property factor of the apportionment formula provided by this section. Except with respect to tangible personal property, for purposes of this subsection, payments, such as interest, taxes, insurance, repairs or other items, shall be treated as rent paid by the lessee if they would have been paid by the lessor if the lease contract or other agreement had not specifically provided that they be paid by the lessee.

For purposes of this section, the value of owned or leased mobile or movable property located both within and without Tennessee during a tax period shall be determined on the basis of the total percentage of time such property is within the state during the tax period; provided that the value of an automobile or truck assigned to a traveling employee shall be considered in Tennessee if the employee's compensation is assigned to Tennessee for purposes of the taxpayer's apportionment formula payroll factor or if such vehicle is licensed in Tennessee.

(d) The average value of property shall be determined by averaging the values at the beginning and ending of the tax period, but the commissioner may require the averaging of monthly values during the tax period if reasonably required to reflect properly the average value of the taxpayer's property.

(e) (1) The payroll factor is a fraction, the numerator of which is the total amount paid in this State during the tax period by the taxpayer for compensation, and the denominator of which is the total compensation paid everywhere during the tax period.

(2) For purposes of this part, "compensation" has the same meaning as set forth in the Excise Tax Law of 1999, compiled in Part 20 of this chapter.

(3) For purposes of this section, "compensation" shall include a taxpayer's share of any specific compensation of a general partnership in which such taxpayer has a partnership interest.

(f) Compensation is paid in this State if:

(1) The individual's service is performed entirely within the state;

(2) The individual's service is performed both within and without the state, but the service performed without the state is incidental to the individual's service within the state; or

(3) Some of the service is performed in the state; and:

(A) The base of operations or, if there is no base of operations, the place from which the service is directed or controlled is in the state; or

(B) The base of operations or the place from which the service is directed or controlled is not in any state in which some part of the service is performed, but the individual's residence is in this State.

(g) (1) The receipts factor is a fraction, the numerator of which is the total receipts of the taxpayer in this State during the tax period, and the denominator of which is the total receipts of the taxpayer everywhere during the tax period.

(2) For purposes of this section, "total receipts" shall include a taxpayer's share of any specific receipts of a general partnership in which such taxpayer has a partnership interest.

(h) Receipts from sales of tangible personal property are in this State if the:

(1) Property is delivered or shipped to a purchaser, other than the United States government, within this State regardless of the F.O.B. point or other conditions of the sale; or

(2) Property is shipped from an office, store, warehouse, factory or other place of storage in this State and the purchaser is the United States government.

(i) Sales, other than sales of tangible personal property, are in this State if the:

(1) Earnings-producing activity is performed in this State; or

(2) Earnings-producing activity is performed both in and outside this State and a greater proportion of the earnings-producing activity is performed in this State than in any other state, based on costs of performance.

(j) Notwithstanding any provision of law other than § 67-4-2112 to the contrary, any person doing business in Tennessee, who licenses the use of patents, trademarks, tradenames, copyrights, or know-how, or other intellectual property to another person in Tennessee, and who is paid royalties or other income based on the sale of products or other activity in Tennessee by the licensee, shall source such income to Tennessee for purposes of its apportionment formula sales factor.

67-4-2112. (a) If the tax computation, allocation or apportionment provisions of this part do not fairly represent the extent of the taxpayer's business activity in this State, or the taxpayer's net worth, as adjusted, the taxpayer may petition for, or the department through its delegates may require, in respect to all or any part of the taxpayer's business activity, if reasonable:

(1) Separate accounting;

(2) The exclusion of any one (1) or more of the formula factors;

(3) The inclusion of one (1) or more additional apportionment formula factors which will fairly represent the taxpayer's business activity in this State;

(4) The use of any other method to source receipts for purposes of the receipts factor(s) of the apportionment formula numerator(s); or

(5) The employment of any other method to effectuate an equitable computation, allocation and apportionment of the taxpayer's net worth, as adjusted, that fairly represents the extent of the business entity's activities in Tennessee.

(b) If any factors are excluded from or added to the statutory apportionment formula, an appropriate change shall be made in the number used as the denominator of the fraction.

(c) (1) In any case of two or more persons, organizations, trades or businesses (whether or not incorporated and whether or not affiliated) owned or controlled directly or indirectly by the same interests, the commissioner through delegates may distribute, apportion, or allocate net worth, income, deductions, credits, or allowances between or among such persons, organizations, trades or businesses, if the commissioner determines that such distribution, apportionment, or allocation is necessary in order to prevent evasion of taxes, excessive use or abuse of exemptions, or to clearly reflect the net worth or gross receipts of such persons, organizations, trades or businesses. In addition, the commissioner through delegates may require combined reports utilizing a common apportionment formula covering members of an affiliated group of corporations. It is the intent of the General Assembly that the federal regulations, rulings and court interpretations with respect to 26 U.S.C. Section 482 be used as guidance in the administration of this provision.

(2) In the case of two (2) or more entities owned or controlled directly or indirectly by the same persons (including but not limited to controlled groups as defined in Section 267 (f) of the Internal Revenue Code), the commissioner, through the commissioner's delegates, may require combined reports and, if applicable, the utilization of a common apportionment formula covering such entities.

(3) The commissioner may apply federal taxation concepts, including but not limited to, "assignment of income", "arms length" and "fair market value" to dealings between and among persons identified in Section 267 (b) of the Internal Revenue Code.

(4) The commissioner may disregard any entity created or transaction made which has no business purpose or is created or made with the primary purpose of evading either the federal income tax or the franchise tax.

(5) For purposes of this subsection, "affiliated group" has the same meaning set forth in Section 1504 of the Internal Revenue Code.

(d) When another method of tax computation, allocation or apportionment has once been established, it shall continue in effect so long as the circumstances justifying the variation remain substantially unchanged, or until changed or discontinued by the department, whichever occurs first. In the event that the department changes or discontinues a variation from the statutory computation, allocation or apportionment provisions that has been granted to or required of a taxpayer, reasonable notice shall be given to the taxpayer affected and any such change or discontinuation shall apply prospectively to the first tax period and to the subsequent tax periods that begin on or after the date of such notice.

(e) For tax years beginning on or before December 31, 2006, a hospital company, as defined in § 67-4-2004(12), shall file its franchise, excise tax return

on a combined basis, together with all other corporations or other entities subject to the taxes imposed under Part 20 and Part 21 of this chapter that are members of its controlled group (as defined in § 267(f)(1) of the Internal Revenue Code), and that are doing business in and taxable by this State, apportioned or allocated as to each member separately as herein provided in §§ 67-4-2110 and 67-4-2111, and then combined. Such combined franchise, excise tax returns shall be signed on behalf of one (1) member of the combined controlled group for itself and on behalf of the other members of the combined controlled group, and such signature shall constitute representation and evidence of authority to file on behalf of all members of the combined controlled group. The combined return shall contain all financial statements and schedules that would be required of each member filing a separate franchise tax return. Each member's net earnings or losses subject to carryover, as the case may be, and each member's apportionment ratio, and applicable supporting schedules shall be computed separately as would be required by law if no combined return were required. The franchise, excise tax shall be computed for the combined group based on the combined net earnings or net losses of the members as combined and shown on the combined return filed for members of the controlled group of companies doing business in this State. The losses available to each member of the controlled group under current or prior law shall be available for offset against the net earnings of the combined group in the first year of filing on a combined basis, and any portion that is not used to offset net earnings of the combined group in the first combined year shall be carried forward on a combined basis to be available as an offset to future net earnings of the combined group in accordance with and subject to the time limitations set forth in § 67-4-2006(c)(1); provided, that such combination shall not extend the time limitation of any then existing net operating losses. No member of the combined group may file its franchise, excise tax return on a separate basis without the consent of the commissioner.

67-4-2113. If a taxpayer's principal business in this State is that of a common carrier of persons or property for hire, or of an insurance company, the taxpayer's net worth shall be apportioned to Tennessee on the basis of the following ratios:

(1) Railroads. The ratio obtained by taking the arithmetical average of the following two (2) ratios:

(A) The gross receipts from railway operations on business beginning and ending within this State without entering or passing through any other state as compared with its gross receipts from such operations within and without the state; and

(B) The mileage owned and operated within Tennessee plus mileage leased and operated within Tennessee as compared with the total of such mileage within and without this State;

(2) Motor Carriers. The ratio obtained by taking the arithmetical average of the following two (2) ratios:

(A) The gross receipts from operations on business beginning and ending within this State without entering or passing through any other state as compared with its entire gross receipts from such operations within and without the state; and

(B) The ratio of the total franchise miles or odometer miles, if there are no franchise miles, to which it holds or uses under lease, contract or otherwise, certificates of convenience and necessity from the Interstate Commerce Commission or the Department of Safety within the state, to the total franchise (or odometer) miles which it holds or uses under such certificates from the commissions, and like commissions, departments or agencies of other states, within and without the state, all as shown by the annual reports made by the corporation to the various commissions from which it holds certificates;

(3) Rail and Motor Carriers. Where the taxpayer is engaged in transporting passengers and property by both rail and motor, then the ratio of the sum of the miles within the state as computed under subdivisions (1) and (2), to the sum of the miles under the subdivisions within and without the state;

(4) Pipelines. The ratio obtained by taking the arithmetical average of the following two (2) ratios:

(A) The gross receipts from operations on business beginning and ending within the state without entering or passing through any other state as compared with its entire gross receipts from such operations within and without the state; and

(B) The ratio of the pipeline miles owned or operated or owned and operated within the state, to the miles of pipelines owned or operated or owned and operated within and without the state;

(5) (A) Insurance Companies Domiciled in Tennessee. The ratio of the premiums on policies, persons and property in this State to total premiums;

(B) Insurance Companies Not Domiciled in Tennessee. The ratio of premiums on policies, persons and property in this State to total premiums, except that annuity considerations shall be excluded from the numerator and denominator of the ratio;

(6) Air Carriers. The ratio obtained by taking the arithmetical average of the following two (2) ratios:

(A) The originating revenue within the state as compared with the entire originating revenue within and without the state; and

(B) The ratio of the total air miles flown within the state to the total air miles flown within and without the state. Air miles flown within the state shall only include miles in the state from flights originating from or ending in the state, or both originating from and ending in the state; and

(7) Air Express Carriers. The ratio obtained by taking the arithmetical average of the following two (2) ratios:

(A) The originating revenue within the state as compared with the entire originating revenue within and without the state; and

(B) The ratio of the total air miles flown and ground miles traveled within the state to the total air miles flown and ground miles traveled within and without the state. Air miles flown within the state shall only include miles in the state from flights originating from or ending in the state, or both originating from and ending in the state. Ground miles traveled within the state or traveled within and without the state shall only include miles traveled with respect to the actual common carriage of persons or property for hire.

67-4-2114. (a) Every taxpayer liable for the tax herein imposed shall file with the Commissioner of Revenue on such form as the commissioner may prescribe an accurate and complete return, signed by its president or other principal officer under penalty of perjury, which report shall contain the following data:

(1) The name of the taxpayer, the state in which chartered or otherwise organized, the location of its principal place of business in this State and the location of its principal or home office;

(2) If applicable, the amount of capital stock subscribed and paid in, the amount issued and outstanding, the amount of surplus and undivided profits or, if applicable, the amount or net worth (assets minus liabilities) together with the book value of each share of such stock as shown by the books and records of the corporation at the close of its last fiscal year;

(3) A comparative balance sheet as of the beginning and close of the last fiscal year as shown by the books and records of the taxpayer; and

(4) Such other and further information as may be required by the commissioner for the reasonable enforcement of this part.

(b) By the enumeration of the specific data required above, it is not intended to divest the commissioner of the commissioner's right to require all information which the commissioner may deem necessary for the enforcement of this part.

(c) Financial institutions which form a "unitary business," as defined in § 67-4-2004(25) shall file a combined return and pay tax on all operations of the unitary business. This report shall include the information set out in subsections (a) and (b) for every member of the unitary group even if some of the members would not otherwise be subject to taxation under this part. Dividends, receipts and expenses resulting from transactions between members of a unitary group shall be excluded from the return for purposes of apportionment under § 67-4-2118.

67-4-2115. The franchise tax return shall be filed as provided in Section 67-4-2015.

67-4-2116. (a) The commissioner is empowered to certify to the Secretary of State the name of any taxpayer which fails or refuses to file any statement or franchise, excise tax return required by Part 20 or Part 21 of this chapter, or to pay any fee or tax herein required; however, no certification shall be issued until such statement, return, or tax has remained delinquent for a period of ninety (90) days.

(b) At the time of such certification to the Secretary of State, the commissioner shall give notice to the taxpayer of the action taken. Thereupon, the charter or certificate of such taxpayer or its domestication in Tennessee shall stand as automatically dissolved or revoked and the Secretary of State shall note such revocation or dissolution upon the Secretary of State's records.

(c) At any time after the date of revocation or dissolution, such charter or certificate or domestication may be reinstated upon the filing of all reports and the payment of all fees, taxes, penalty and interest due the state; provided, that the title has not been taken by another taxpayer.

67-4-2117. The commissioner is empowered and it is the commissioner's duty to collect the tax, together with penalty and interest, levied hereunder from any officer, stockholder, partner, member, principal, or employee of a taxpayer that has dissolved or has been liquidated, at a time such taxpayer has refused or failed to pay the franchise tax levied under this part, and such individual has received property belonging to the taxpayer, but such collection shall be limited to the value of the property received.

67-4-2118. (a) Notwithstanding any other provision of this part, a financial institution which is not filing a combined report and which has business activity both within and without Tennessee and which is paying tax based on the value of its issued and outstanding stock, surplus and undivided profits shall apportion its tax base to Tennessee by multiplying net worth by the quotient of the institution's total receipts attributable to the transaction of business in Tennessee, as determined under subsection (d), divided by the institution's total receipts attributable to transacting business in all taxing jurisdictions, as determined under subsection (d).

(b) A unitary group shall have net worth (issued and outstanding stock, surplus and undivided profits) apportioned to Tennessee based on the apportioned net worth of each of the members of the unitary group as determined under the provisions of subsection (a).

(c) For purposes of subsection (a), "receipts" includes all gross income, including net taxable gain on disposition of assets such as securities and money market transactions, when derived from transactions and activities in the regular course of business.

(d) "Receipts," as used in this section, shall be attributed to Tennessee as follows:

(1) Receipts from the lease or rental of real or tangible personal property shall be attributed to Tennessee if the property is located in Tennessee;

(2) (A) Interest income and other receipts from assets in the nature of loans or installment sales contracts that are primarily secured by or deal with real or tangible personal property shall be attributed to

Tennessee if the security or sale property is located in Tennessee. If any part of the sale property or property standing as security for the payment of the debt is located part within and part without the state, only such proportion of the interest income or other receipts shall be attributed to Tennessee as the value of the property within the state bears to the whole property;

(B) "Value" means only that value which the property would command at a fair and voluntary sale. Value shall be determined at the time the loan is made and shall not vary from year to year. In the event additional real or tangible personal property is pledged as security or otherwise covered under a loan or installment sales contract after the time the loan is made, the ratio based on the value of the property in the state compared to the whole property shall be adjusted;

(3) Interest income and other receipts from consumer loans not secured by real or tangible personal property shall be attributed to Tennessee if the loan is made to a resident of Tennessee, whether at a place of business, by a traveling loan officer, by mail, by telephone or by other electronic means;

(4) Interest income and other receipts from commercial loans and installment obligations not secured by real or tangible personal property shall be attributed to Tennessee if the proceeds of the loan are to be applied in Tennessee. If it cannot be determined where the funds are to be applied, the receipts are to be attributed to the state in which the business applied for the loan. As used in this subdivision, "applied for" means initial inquiry (including customer assistance in preparing the loan application) or submission of a completed loan application, whichever occurs first. For attribution purposes, "loan" does not include demand deposit accounts, federal funds, certificates of deposit, and other similar wholesale banking instruments issued by other financial institutions;

(5) All receipts and fee income from the issuance of letters of credit, acceptance of drafts, and other devices for assuring or guaranteeing a loan or credit shall be attributed in the same manner as interest income and other receipts from the loan are attributed as set out in either subdivision (d)(2), (3), or (4);

(6) Interest income, merchant discount, other receipts (including service charges from financial institution credit card and travel and entertainment credit card receivables and credit card holders) and fees shall be attributed to the state to which the card charges and fees are regularly billed;

(7) Receipts from the sale of an asset, tangible or intangible, shall be attributed in the same manner that the income from the asset would be attributed under this section;

(8) Receipts from the performance of fiduciary and other services shall be attributed in accordance with § 67-4-211(i);

(9) Receipts from the issuance of traveler's checks, money orders or United States savings bonds shall be attributed to the state where such items are purchased; and

(10) Receipts from a participating financial institution's portion of participation loans shall be attributed as otherwise provided under this subsection. A participation loan is any loan in which more than one (1) lender is a creditor to a common borrower.

67-4-2119. The minimum franchise tax payable under this part shall be one hundred dollars (\$100).

67-4-2120. All taxes collected under this part shall be distributed to the general fund.

SECTION 5. The Commissioner of Revenue is directed to study (1) the advisability of requiring taxpayers, who are members of affiliated groups and who are subject to the franchise and excise taxes, to file returns on a combined basis; (2) the advisability of using receipts as the single factor for apportionment purposes for all taxpayers subject to the franchise and excise taxes; and (3) the advisability of excluding goodwill from the determination of net worth for the franchise tax; and to report such studies' findings, including the fiscal impact and other related issues, to the Commissioner of Finance and Administration and the Finance, Ways and Means Committees of the Senate and the House of Representatives on or before October 1, 2000.

SECTION 6. Tennessee Code Annotated, Section 67-1-1440 is amended by adding the following new subsection:

(g) It is a Class E felony for any person willfully to attempt in any manner to evade or defeat any tax due the State of Tennessee. Each act done in violation hereof is a separate offense.

SECTION 7. Tennessee Code Annotated, Section 67-1-1501(b) is amended by deleting subdivision (3) in its entirety, and substituting in its place the following:

In the case of a redetermination of net income by the Internal Revenue Service resulting in a taxpayer owing the state additional franchise or excise tax, the statutory period for the assessment of additional franchise or excise tax resulting from such revision shall not expire prior to the expiration of two (2) years from the date the commissioner or the commissioner's delegate is notified in writing by the taxpayer of such revision;

SECTION 8. Tennessee Code Annotated, Section 67-1-1802(a)(3), is amended by deleting the word "corporate".

SECTION 9. Tennessee Code Annotated, Section 67-4-402(d), is amended by deleting the words and numerals "Parts 8 and 9" wherever they appear and by substituting the word and numerals "Parts 20 and 21."

SECTION 10. Tennessee Code Annotated, Section 67-4-405(d), is amended by deleting the words and numerals "Part 9" and "Part 8" and substituting instead the words and numerals "Part 21" and "Part 20," respectively.

SECTION 11. Tennessee Code Annotated, Section 67-4-406(b), is amended by deleting the words and numerals "Part 9" and "Part 8" and substituting instead the words and numerals "Part 21" and "Part 20."

SECTION 12. Tennessee Code Annotated, Section 67-6-224(a)(3), is amended by deleting the words and numerals "Parts 8 and 9" and substituting "Parts 20 and 21"; is further amended by deleting "§ 67-4-908(c)" and substituting "§ 67-4-2109(c)"; and is further amended by deleting "§ 67-4-808" and substituting "§ 67-4-2009."

SECTION 13. The commissioner is authorized to promulgate rules and regulations in accordance with the provisions of Tennessee Code Annotated, Title 4, Chapter 5, to implement and administer the provisions of this act. Such rules, to the extent deemed necessary by the commissioner for timely implementation of this act, shall include public necessity rules.

SECTION 14. Tennessee Code Annotated, Section 67-6-710, is amended by deleting the section in its entirety and by substituting instead the following:

(a)(1) In collecting and administering the tax levied under the authority of this part, the Commissioner of Revenue shall have the same powers as the Commissioner of Revenue has in collecting and administering the state sales tax.

(2) Rules and regulations promulgated by the commissioner under Tennessee Code Annotated, Sections 67-1-102, and 67-6-402, shall be applicable to the tax levied under the authority of this part, and shall be binding on cities, counties, and towns, and interest and penalty for delinquencies shall be imposed equal to the rates provided in Tennessee Code Annotated, Section 67-6-516.

(b)(1) The Department of Revenue shall collect such tax concurrently with the collection of the state tax in the same manner as the state tax is collected; provided, that the department has determined that such collection of the tax is feasible, and has promulgated rules and regulations governing such collection.

(2) The department shall remit the proceeds of the tax to the county, city or town levying the tax, less a reasonable amount of percentage as determined by the department to cover the expenses of administration and collection. This percentage shall be one and one hundred twenty-five thousandths percent (1.125%) for fiscal year 1987-1988 and subsequent fiscal years. The percentage shall not be less than necessary to defray the state's expenses in administering, collecting, and remitting the local sales tax, as determined annually by the department and certified by the Comptroller of the Treasury.

(c) The county, city or town shall furnish a certified copy of the adopting resolution or ordinance to the Department of Revenue in accordance with regulations prescribed by the department.

(d) (1) Upon any claim of illegal assessment or collection, the taxpayer shall have the remedy provided in Tennessee Code Annotated, Section 67-1-1801, et seq., it being the intention of the General Assembly that the provisions of law which apply to the recovery of state taxes illegally assessed or collected be conformed to apply to the recovery of taxes illegally assessed or collected under the authority of this part.

(2) The resolution or ordinance levying the tax shall designate the county or municipal officer against whom suit may be brought for recovery.

(e) (1) Proceeds of the tax provided for in Tennessee Code Annotated, Section 67-6-702(f), shall be distributed to the counties based on the ratio of local

tax collections in the county under this section over total tax collections in all counties under this section.

(2) The amount received by the county under subdivision (e)(1) shall be distributed first as provided for in Tennessee Code Annotated, Section 67-6-712(a)(1). The remainder shall be distributed to the cities or towns in the county based on the ratio of total collections in the municipality to total collections in the county.

(3) A county and a municipality may, by contract, provide for an alternative distribution for the amount not distributed under Tennessee Code Annotated, Section 67-6-712(a)(1).

Tennessee Code Annotated, Section 67-6-711, is amended by deleting the section in its entirety.

SECTION 15. Tennessee Code Annotated, Title 67, Chapter 6, is amended by adding the following new sections to Part 3.

67-6-356. (a) The General Assembly finds and declares that exemptions from state taxation of its citizens, businesses and industries result in significant revenue loss and that a method of reviewing such exemptions is necessary to ensure that unnecessary and harmful exemptions are abolished and that legitimate, necessary exemptions are continued.

(b) It is the intent of the General Assembly by this act to provide a responsible method to review tax exemptions to ensure that such exemptions are beneficial rather than detrimental to the public interest of the citizens of Tennessee.

67-6-357. The Department of Revenue shall notify the Chair of the Joint Select Committee on business taxes prior to August 1 of each year of any statutory exemption from the following taxes which resulted in loss of revenue of one million dollars (\$1,000,000) or more in the preceding fiscal year:

(1) Sales and use tax (codified at Tennessee Code Annotated, Title 67, Chapter 6);

(2) Franchise tax (codified at Tennessee Code Annotated, Title 67, Chapter 4, Part 9);

(3) Excise tax (codified at Tennessee Code Annotated, Title 67, Chapter 4, Part 8); and

(4) Gross receipts tax (codified at Tennessee Code Annotated, Title 67, Chapter 4, Part 3).

67-6-358. The Joint Select Committee on business taxes shall review all exemptions reported to it by the Department of Revenue in accordance with the provisions of this act and all exemptions which are created after January 1, 2000, which are subject to the provisions of this act.

67-6-359. (a) The committee shall establish a schedule to review exemptions subject to review pursuant to Section 67-6-358.

(b) Prior to the repeal, continuation, reestablishment or restructuring of any tax exemption, the committee shall hold at least one (1) public hearing and receive testimony from the public and from the Department of Finance and Administration.

(c) In conducting the review of exemptions, the committee shall take into consideration the following factors:

- (1) The amount of revenue loss caused by the exemption;
- (2) The impact of the exemption on the person, business or industry benefited by the exemption;
- (3) The impact of repeal of the exemption on the economy;
- (4) The impact on employment in businesses or industries benefited by the exemption;
- (5) The extent to which other government actions might achieve the purpose sought to be achieved by the exemption;
- (6) The results of published and unpublished studies of various alternative methods of accomplishing the objectives of the exemption;
- (7) The extent to which the absence or continuation of the exemption would endanger the public health, safety or welfare;
- (8) The extent to which the exemption directly or indirectly increases the costs of goods or services to the public;
- (9) The extent to which the exemption is designed to protect and promote the public interest and the degree to which that exemption has attained those objectives;
- (10) The extent to which a need actually exists for the exemption;
- (11) The extent to which the exemption has effectively obtained its objectives and purposes and the efficiency with which it has operated; and
- (12) The extent to which the exemption is comparable to similar exemptions offered by other states.

67-6-360. (a) If the committee by a majority vote determines that an exemption should be repealed, the committee shall cause to be introduced legislation necessary to repeal such exemption.

(b) If the committee by a majority vote determines that an exemption should be continued, restructured or reestablished, the committee shall cause to be introduced legislation to amend the appropriate sections of the code or the public acts.

67-6-361. Each exemption which is continued, restructured or reestablished pursuant to this act shall be reviewed four (4) years following its continuation restructuring or reestablishment, and shall be subject every four (4)

years thereafter during its existence to the review and procedures provided for in this act.

67-6-362. Any legislation which the committee causes to be introduced shall concern only one (1) exemption, and the nature of such exemption shall be contained in the caption of the bill. However, if the committee causes legislation to be introduced which would restructure two (2) or more exemptions by combining the exemptions, then such legislation may concern all the exemptions thereby restructured; provided, that a description of all such exemptions are contained in the caption of the bill.

67-6-363. Nothing in this act shall be construed to prohibit the General Assembly from repealing an exemption covered by its provisions at a date earlier than that provided herein, nor to prohibit the General Assembly from considering any other legislation relative to such an exemption.

67-6-364. (a) Notwithstanding any provision of law to the contrary, each exemption from the taxes enumerated in Section 67-6-357 initially created after January 1, 2000, shall be repealed on June 30 of the fourth calendar year following the year in which such exemption is created, if the fiscal note on such exemption states that the exemption will cause revenue loss of one million dollars (\$1,000,000) or more in a fiscal year.

(b) In conducting the review of such exemption, the committee shall take into consideration the criteria enumerated in Section 67-6-359(c).

The provisions of this section shall take effect on July 1, 1999, the public welfare requiring it.

SECTION 16. T.C.A., Title 67, is amended by adding the following as an appropriately designated new section:

(a) In determining taxpayer liability of any professional practitioner licensed by the state of Tennessee, the commissioner shall have no authority to obtain access to legally privileged information as provided for in T.C.A. § 23-3-105 or to confidential client information as provided for in statute or professional rules, including the rules of the Tennessee Supreme Court. Confidential client information includes, but is not limited to, the identity of a client, the nature of the matter for which representation was sought, or any information obtained by counsel in the course of the client's representation.

(b) When the provisions of subsection (a) are asserted, the disclosure of any information shall be made only after a court order compelling disclosure of such information is final. In an action to compel such disclosure, the client affected by the disclosure has the right to intervene anonymously; any examination of the information shall be conducted *in camera*; and, the commissioner shall have the burden of proof to show, by clear and convincing evidence, that the information sought is not privileged or confidential client information.

SECTION 17. Except as otherwise provided in this section, if any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect the other provisions or applications of the act that can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable.

SECTION 18. The Joint Select Committee on Business Taxes is directed to study and monitor the implementation of this act and to report any recommendations to the General Assembly before the year 2000 Legislative Session.

SECTION 19. (a) This act shall take effect upon becoming law for the sole purpose of promulgating regulations and forms, the public welfare requiring it.

(b) The provisions of Section 3 relative to excise tax and Section 4 relative to franchise tax shall take effect upon becoming law; and for limited liability companies, limited liability partnerships and limited partnerships, in which one or more corporations subject to franchise, excise taxes under prior law directly or indirectly have in the aggregate an eighty percent (80%) or more ownership interest at any time after June 30, 1998, Sections 3 and 4 shall apply to tax years ending on or after June 30, 1999; but for all other taxpayers Sections 3 and 4 shall apply to tax years beginning on or after July 1, 1999; the public welfare requiring it.

(c) Subsection (b) notwithstanding, the provisions of Section 67-4-2014 of Section 3 of this Act and Section 67-4-2112 of Section 4 of this Act, relative to variances, fraud and abuse, and Section 67-4-2012(j) of Section 3 of this Act and Section 67-4-2111(j) of Section 4 of this Act, relative to royalty income, shall take effect June 30, 1999, and shall apply to tax years ending on or after June 30, 1999, the public welfare requiring it.

(d) All other provisions of this act shall take effect July 1, 1999, the public welfare requiring it.

PASSED: May 28, 1999



JIMMY NAIFEH, SPEAKER
HOUSE OF REPRESENTATIVES



JOHN S. WILDER
SPEAKER OF THE SENATE

APPROVED this 17th day of June 1999



DON SUNDQUIST, GOVERNOR